George Buchanan
on the
Powers of the Crown in Scotland

Charles Flinn Arrowood

The Powers of the Crown in Scotland

Being a Translation, with notes and an Introductory Essay, of

George Buchanan's "De Jure Regni Apud Scotos"

by

CHARLES FLINN ARROWOOD

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TO

FLORA REGISTER ARROWOOD

"Dulce ridentem . . . , dulce loquentem"

PREFACE

This translation of George Buchanan's *De Jure Regni apud Scotos* has been made in connection with a study, which I have been pursuing for some time, of theory of education in British political philosophy. Buchanan, Knox, and Melville were the three leaders of the sixteenth century reformation of Scottish education; and an important part of Buchanan's contribution to this reformation, was to supply the classical statement of its political principles. The *De Jure Regni* in which this statement was fully formulated exercised an immense influence over the development of political philosophy in Great Britain and North America. My study of theory of education in British political theory, therefore, made a close study of Buchanan's treatise necessary. In connection with this study I made use of both the Latin text and an English rendering of the work, published in London, in 1689—there was an edition of the work in 1680—by a translator who hid his identity behind the pseudonym Philalethes.

So great is the worth of Buchanan's political essay, that I no sooner became fully familiar with it than I became impressed with the importance of seeing the work made readily accessible to modern students. It is not readily accessible now, for not only are copies of the book rare, but the editions which are to be had lack notes; so that, even when a copy of the work is at hand, Buchanan's thought is still hard to get at. I, therefore, have translated the Latin into English, using the text found in the collected edition of Buchanan's works, which was prepared by Thomas Rudiman and published at Edinburgh, in 1715, by Robert Fairbairn, under the title, *Georgii Buchanani Scoti, Poetarum sui seculi facile Principis, Opera Omnia.*

Buchanan's dialogue is without any chapter divisions. The chapter divisions and headings in this English rendering are supplied by the translator.

I acknowledge, with a great deal of pleasure, the help given me by a number of persons in making this study and in preparing the manuscript for the press. Miss Lallande Witherspoon, and Mrs. R. C. Stephenson typed the manuscript for the printer. The staffs of the libraries of The University of

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PART I

George Buchanan and the "De Jure Regni Apud Scotos"

Chapter One. A Short Account of the Life of George Buchanan

Of all forms of government, democratic nationalism has proved most conducive of human good. The modern, and by all odds the most developed, form of democratic government had its beginnings in the sixteenth century; and to those beginnings the Scottish humanist and reformer George Buchanan made a unique and weighty contribution. Before we attempt to describe that contribution, and to appraise it in detail, let us see what manner of man Buchanan was.

George Buchanan was born not far from the City of Stirling, early in February, 1506, the third son of a poor laird, who died while George Buchanan was a small boy. Buchanan early showed such promise in school that his mother's brother, James Herriot, assisted him, and sent him, when he was about fourteen years of age, to the University of Paris. When Buchanan had been but two years in Paris, James Herriot died, and lack of funds forced the young student to return to Scotland. He served in the Scottish army for the duration of a short campaign in England—a venture which almost wrecked his health. In the spring of 1524 he went to St. Andrews, where he heard the lectures of the celebrated John Major, and received the degree of Bachelor of Arts in 1525. In 1527 he returned to Paris, where, the following year, he took the degree of Master of Arts.

Following the taking of his Paris degree, Buchanan entered upon a career of teaching and literary work. He taught at Paris, where he was a leading figure among the humanists who were just then effecting a revolution in the teaching of the classics;[1] was tutor to Gilbert, Earl of Cassillis; and eventually returned to Scotland. There, by certain satirical poems of his in which monks and friars were held up to ridicule, he incurred the resentment of the clergy.

The hierarchy of Scotland was aroused at the time by the rising tide of Protestant sentiment, and Buchanan, with others, was arrested and thrown into prison. He escaped, however,

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[1]Alexander Morgan, *Makers of Scottish Education* (London, Longmans, Green, and Co., 1929), p. 25.

He found time for considerable literary work during those years and occupied much of his time in the study of theology.

Within a short time after the termination, in 1560, of his service as tutor to Timoleon de Cossé, Buchanan returned to Scotland. He had dedicated his paraphrase of the *Psalms* to Mary, Queen of Scots, and had written an ode in her honor on the occasion of her marriage with the Dauphin. For some time he read Livy regularly with the Queen. Buchanan adhered to the Church of Scotland, and from 1563 to 1567 was a member, as a "Doctor," of the General Assembly. He served on several of its important committees and, in 1567, was its Moderator—the first layman to be so distinguished. In 1566 he was appointed Principal of St. Leonard's College, at St. Andrews. Buchanan retained his principalship for four years, and led in the transformation of the University from a medieval to a renaissance institution.

The years 1566 and 1567 were fateful in the history of Scotland. On June 19, 1566, a son was born to Mary, Queen of Scots, and the following February, Darnley, her husband, was murdered. Mary married the Earl of Bothwell, who was suspected of complicity in the crime, in such haste that resentment rose high against both of them, and the Queen was forced to abdicate and her infant son crowned as James VI.

With these changes in the government, new responsibilities were quickly forced upon Buchanan. He was one of the Scottish commissioners charged with investigating the matter of Mary's complicity in the death of her husband. He was director of Chancery, one of the persons entrusted with the education of the young king, and lord privy seal. He held this last post, and the seat in Parliament which went with it, at the least, until 1579. In 1579 his great political treatise, *De Jure Regni apud Scotos,* written, he tells us, some years before, was published. Buchanan's last years were spent in writing his great *History of Scotland,* which was in press during his last illness. He died on September 28, 1582.

There are facts about Buchanan's life which must be taken especially into account in interpreting his political theory. The author was a Scot, writing at the time of the emergence of modern Scottish nationalism; he was a Lennox man, caught

James was about thirteen years of age, the *De Jure Regni apud Scotos* appeared, and was presented to the King in the "Letter" which serves as the foreword to the dialogue. The failure of the attempt to incline James's mind to liberal opinions is a matter of history; that the failure of the Stuarts to understand what are those arms which alone "make kings invincible" is also a matter of history. We turn now to the tract, itself.

Chapter Two. The Purpose and Content of Buchanan's De Jure Regni apud Scotos

Buchanan's political treatise was written with an eye to a particular occasion and with a very definite purpose in view. Although it was published, as the letter by which it was dedicated to James VI indicates, in 1579, it was written about twelve years earlier, at the time of the disturbances which led to the abdication of Mary, Queen of Scots. The treatise was written to show that the Scots, in the course they had taken, had acted in accordance with the laws of Scotland, of nature, and of God; and with the purpose of convincing foreigners of the legality of their proceeding, and of uniting the Scottish people. The work had, however, a much larger bearing, and the larger implications of the essay will be examined in considerable detail in a later chapter of this study. These two aspects of the *De Jure* are intimately related. The essay is concerned with abstract concepts of natural right, sovereignty, the teachings of the Scriptures respecting government and similar general questions; but, in its examination of them it draws upon history—and upon Scottish history in particular—for facts, and it applies general principles from natural laws, political theory, and the Scriptures to the immediate issue in Scotland. An understanding of the controversy which divided Scotland and served as the occasion of the treatise will contribute a good deal to an understanding of Buchanan's political philosophy. Let us, then, examine the circumstances under which the *De Jure Regni apud Scotos* was written.

Mary Stuart, from her infancy Queen of Scotland and the Isles, assumed the active government of her realm in 1561,

mental question at stake in the controversy. That question was: Had the people of Scotland the right to call their rulers to account for their public acts? Buchanan develops the thesis, which became the central doctrine of Presbyterian and Puritan political theory—both in Great Britain and in America—that no person in a state is above the law which the people, through their representatives, enact.

The treatise is cast in the form of a dialogue between young Thomas Maitland, a brother of Sir William Maitland of Lethington, and Buchanan, himself. Maitland poses the questions which puzzled the loyal Scot who regards his king as sacred and so above being called to account by any human agency. Buchanan's speeches build up the case for limited and responsible government.

Maitland, we learn as the dialogue opens, had just returned to Scotland from France, where he had been pursuing his studies, and expressed himself as greatly disturbed by the situation in Scotland and by the unfavorable opinion which persons in foreign courts were forming of his native country. He was especially troubled by the fashion in which the Queen had been dealt with—a matter which would, he felt sure, bring upon the nation the censure of Europe. Buchanan pointed out that if the murder of Darnley had been a crime, no exception could properly be taken to the effort to call the perpetrators of the deed to account. Maitland, however, was still unsatisfied—he questioned Buchanan's fundamental assumption—that kings are subject to the laws. With the issue thus brought into the open, the friends set themselves to the task of examining the reciprocal rights and duties of king and subjects in Scotland.

It was agreed that the study of the origins of governments should throw light upon the problem. Buchanan rejected the notion that utility or expediency is the first or most fundamental bond of social unity. Men are, by nature, made for society and the shared life, and governments are set up as providing the setting most favorable to the life conformable to the laws of nature. Men desire governments as the means of securing benefits and the maintenance of justice, which are essential to the development and maintenance of civilized society, for which they are formed. This position is essentially

in one capacity only, that of a person accused of a crime. He who stands in the prisoner's dock is there simply as a person charged—not as king or commoner. Members of classes other than the noble and royal feel no injury to their group if one from their order who is guilty of a crime is punished for it; they are glad, rather, that their order has been purified by the removal of one who disgraced it. Perhaps those who raise a clamor at this disgrace to their order are less concerned by this injury to it than for fear some of the privileges and immunities they enjoy may be lost to them. The judge, moreover, when he pronounces judgment, speaks the law, and, on this account, his voice is the voice of the people. The man who stands before a judge, therefore, stands before the representative of the people, from whom the authority of the law proceeds; so that, whatever the rank of the accused, he who stands before a judge stands before the very majesty of the people—he stands before his superior.

But what if a king refuses to submit to the sentence of judges who find against him? Buchanan asserts, unequivocally, that any person who thus puts himself outside the law, obedience to which is the condition of membership in civilized society, becomes, by this act, a public enemy; so that citizens have not only the right but the duty to levy war against him. He is no less an enemy of the people and their country than is the foreign invader.

The basis of Buchanan's position is as follows: Kings do not exercise authority by divine or other inherent right, but are created kings by election at the hands of their people, and on condition of maintaining the laws. This contract does not create society, which is man's "natural" state, but does create the machinery necessary for the maintenance of an ameliorated, stable, and civilized society. Failure on the part of a subject to obey the laws deprives him of their protections; and failure on the part of the ruler to maintain and observe them places him, likewise, outside the protection of the laws. Should the king violate his coronation oath, he abrogates the contract between himself and his subjects; so that his people revert, as respects their obedience, to the state they were in before—that is, free of obligation to obey him. The severance of the bond

God has ordained, and the men who exercise the powers of government. Chrysostom, arguing by analogy, had pointed out that God has ordained marriage, and marriage is to be honored among men, but God does not arrange particular marriages, husbands and wives choose each other. In like manner, God has ordained government, and he who resists a just and legal magistrate does, indeed, sin against God. But—and in this point Knox had anticipated Buchanan—he asserted that is is blasphemy to say that tyrants are doing God's will. Buchanan described the character of Nero, Caligula, and other Roman emperors, and ridiculed the idea that the persons of such monsters were sacred.

Having made this distinction, and called attention to the distinction made by high papalists—he might have cited John of Torquemado—between the papal office and the man who occupies it, Buchanan went on to examine the teaching of Paul in this matter. We are to pray for rulers "that we may live a quiet life." It is good government, then, that should have our support; not some ruffian who has grasped power which he is using for his own selfish advantage. God has, to be sure, permitted bad men to hold office, but this is not to say that he has granted them immunity for their crimes. The claim that tyrants have been brought upon us by our own sins proves too much: this argument cuts both ways—tyrants bring retribution, likewise, upon their own heads. Paul commands obedience to all the powers, and lesser officials, even hangmen, are representatives of the same majesty. Do all of these people enjoy immunity from punishment for their crimes? God has established government for human good, and we are obliged, as Christians, to obey just and legal government only.

The literalist still objects to Buchanan's position, and asks for an example from the Scripture which will furnish a warrant to subjects authorizing them to call their rulers to account. Ponet, in *A Shorte Treatise of Politicke Power*, meets this objection by saying that there is no need for a general command or example—we are told to punish murderers and other malefactors, and that this rule applies to all evil-doers, even royal evil-doers. Buchanan, also, employs this argument, but goes further, and meets this problem in a much more rational spirit.

British authors leave us in no doubt as to the importance of Buchanan's treatise in Presbyterian and Puritan thought. David Irving cites Archbishop Spotswood as his authority for the statement that, shortly after the publication of the work, theological students at St. Andrews were devoting more attention to it than to Calvin's *Institutes*.[2] Aenaes Mackay, in a short biography of George Buchanan which he contributed to the *Dictionary of National Biography*, tells us that Buchanan's political tract "was long the textbook of opponents of absolutism," and says further, "The *De Jure Regni apud Scotos* was a standard work in the hands of the men of the long parliament." Milton, in his *Defense of the People of England*, says to those who question the legality and justice of limited and responsible government: "For Scotland I refer you to Buchanan." That he should say this is not at all surprising, for Milton's debt to the Scottish humanist is so great and so obvious that Dryden, in the "Letter to the Whigs" which he prefaces to *The Medal*, charges that the *Defense* is "manifestly . . . stolen" from Buchanan's *De Jure Regni apud Scotos*. Dugald Stewart, whose appreciation of Buchanan's political thought is one of the most astute ever penned, wrote:

> The dialogue of our illustrious countryman, Buchanan, *De Jure Regni apud Scotos* . . . bears . . . in its general spirit, a closer resemblance to the political philosophy of the eighteenth century, than any composition which had previously appeared. The ethical paradoxes, afterwards inculcated by Hobbs, as the groundwork of his slavish theory of government, are anticipated and refuted; and a powerful argument is urged against the doctrine of utility which has attracted so much notice in other times.[3]

In the light of the influence exercised by the book, it is not surprising that Mr. Harold Laski has said, " . . . it is possible that Buchanan's famous dialogue was the most influential, political essay of the sixteenth century."[4]

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[2]David Irving, *Memoir of the Life and Writings of George Buchanan* (Edinburgh, Bell, Bradfute and A. Laurie, 1806), p. 236.

[3]Dugald Stewart, *Dissertation on the Progress of Metaphysical, Ethical, and Political Philosophy*, in *Works* (Edinburgh, T. and T. Clarke, 1877), I, 61–62.

[4]Harold Laski, "Introduction" to *A Defense of Liberty Against Tyrants* —the translation by Junius Brutus of H. Languet's *Vindiciae Contra Tyrannos* (London, G. Bell and Sons, Ltd., 1924), p. 5.

hold their offices by virtue of election; that their exercise of powers, properly, is limited by the laws; that rulers are accountable for their acts; and that tyrants may be justly put to death. Nothing is easier than to show that he has been anticipated in each of those principles. It is easy to show, however, that each of these predecessors, and each of Buchanan's contemporaries, too, said a great deal more; and that, in consequence, the impact of the writings of no one of them is precisely that of the *De Jure*. Buchanan was very much the man of his age. The continuity of his thought with the conciliar movement, his relation to renaissance humanism, to early Protestant theory of government, to the Scottish tradition—particularly as represented by his teacher, John Major—and the points of agreement and difference between his political theory and that of the French Huguenot theorists, and of Knox and Ponet, must all be taken into very careful account.

Paul Janet asserts that the religious and reformation element was almost absent from Buchanan's political theory, and that one found in it instead the literary and philosophic spirit of the renaissance.[5] Buchanan is not, he continues, "the disciple of Calvin and Knox, but of Plato, Aristotle, and Cicero."

Buchanan was not, to be sure, the disciple of his younger contemporary Calvin, nor of his colleague and friend Knox, but there is no conflict in the explicitly stated political ideas of the two Scots. Neither Knox nor Buchanan agreed with Calvin in his teaching respecting the obedience due to magistrates. Calvin taught obedience as a Christian duty, while Knox taught the citizen's duty to resist an oppressor; and, as is well known, he and Knox engaged in a sharp exchange over the matter. Buchanan was the disciple of Plato and Aristotle to no greater extent than every Christian humanist is. The two passages in the *De Jure* which have a definitely Platonic flavor, (1) the reference to ideas in the mind of the artists being the perfect type to which the concrete work of art corresponds, though incompletely, and (2) the references to governments being of law, had been current in western Christendom long before Buchanan wrote. Since Aristotle's ethical and political

[5]Paul Janet, *Histoire de la Science Politique dans ses Rapports avec Morale* (Paris, Felix Alcan, 1913), II, pp. 46–48.

of all reference to the quality of the persons who legislate in a state leaves the way open to an interpretation of Marsilius as an exponent of popular sovereignty, the law being what the majority decrees.[6] Since, as Professor D'Entrèves further points out, Marsilius clearly says that the quality of persons legislating must be taken into account, his is not a philosophy of popular sovereignty or of the rule of the majority. Buchanan, on the other hand, is quite explicit in favoring popular government. He says: "A majority of the people may decree a law or create a ruler."[7] He, further, expresses confidence in the plain people, and goes on to declare that those are to be accounted citizens who uphold the laws and support organized society. He asserts his confidence that with proper leadership the majority of the people will stand up for "liberty, integrity and security."[8]

In the main, Buchanan is combating two theories of government which, in the sixteenth century, came into sudden prominence, and which were quite as hateful to high papalists as to him; these theories were the opportunism and utilitarianism of Machiavelli's writings and the dogma of royal absolutism. Buchanan's argument against both of these positions is based upon the conception of natural law—a conception which he held in much its Catholic form. That conception is, briefly, as follows. There is an order of all things; this order is embodied in man's nature as a sort of natural guide of life. It is discoverable to reason, so that reason never says one thing and nature another. Since it is an order created by the author of nature, it is never contrary to the will of God. The summary of the law found in Luke x.27 is an epitome of the law of nature.

In opposing the position of Machiavelli, Buchanan appealed to this law of nature. Machiavelli discerned no interests save those which were supplied by a man's own egoism. Since there are no motives save those of selfish self-interest, governments depend principally on craft and force. Political expediency, not moral right, is the guiding principle of all statecraft.[9]

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[6]Alexander Passervin D'Entrèves, *The Medieval Contribution to Political Thought* (Oxford, Oxford University Press, 1939), pp. 55–56.

[7]Chapter 43.

[8]Chapter 44.

[9]See G. Machiavelli, *The Prince*, translated by W. K. Marriott (New York, E. P. Dutton and Co., 1908), p. 97.

This clear prescription settled the matter for the great early reformers. They had repudiated the spiritual authority of the Pope and had appealed to the letter of the Scriptures.

Tyndale, in his *The Obedience of a Christian Man,* said:

> God . . . hath given laws unto all nations, and in all lands hath put kings, governors, and rulers in his own stead to rule the world through them. . . . Whosoever resisteth them [*i.e.,* rulers] resisteth God (for they are in the room of God) and they that resist shall receive damnation.
>
> Such obedience unto father, mother, master, husband, emperor, kings, lords and ruler requireth God of all nations. . . .
>
> . . . Neither may any inferior person avenge himself on the superior, or violently resist him for whatsoever wrong it be. If he do, he is condemned in the deed doing; inasmuch as he taketh upon him that which belongeth to God only.[11]

Tyndale goes on to argue that the inferior may not resist his superior, and having cited the sparing of Saul's life by David, concludes,

> . . . hereby seest thou that the king is in this world without law, and may at his lust do right or wrong, and shall give accounts, but to God only.[12]

In the Middle Ages, some restraint had been exercised over parents, barons, and monarchs by the Roman Church. Tyndale allowed of no restraint on secular rulers. He said:

> One king, one law is God's ordinance in every realm. Therefore ought not the king to suffer them [the priests] to have a several law by themselves, and to draw his subjects thither.[13]

Tyrants are the instruments to do God's will upon a sinning people. Just as a father punishes an erring child, "so hath God all tyrants in his hand, and letteth them not to do whatsoever they would, but as much only as he appointeth them to do, and so far as is necessary for us."[14]

Elsewhere Tyndale writes:

> As the law is a terrible thing; even so is the king. For he is ordained to take vengeance, and hath a sword in his hand and not peacocks' feathers.

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[11]William Tyndale, *The Obedience of a Christian Man,* in *Works* (London, Ebenezer Palmer, 1831), pp. 210–211.
[12]*Ibid.,* p. 214.
[13]*Ibid.,* p. 272.
[14]*Ibid.,* p. 178.

Luther and Tyndale had done before him. He states the duty of political servility without any sort of qualification, saying, "It is our duty to be obedient to any governors whom God hath established over the places in which we reside."[19]

Calvin does, however, concede this liberty to the oppressed subject: he allows him to pray about the matter. He writes:

> . . . if we are inhumanly harrassed by a cruel prince; if we are rapaciously plundered by an avaricious or luxurious one,—let us first call to mind our transgressions against God, which he undoubtedly chastises by these scourges. Let us, in the next place, consider that it is not our province to remedy, these evils; and that nothing remains for us, but to implore the aid of the Lord, in whose hand are the hearts of kings and the revolutions of kingdoms.[20]

In his opinion, however, nothing can justify resistance to rulers:

> For though the correction of tyrannical domination is the vengeance of God, we are not, therefore, to conclude that it is committed to us, who have received no other command than to obey and suffer.[21]

The mid-point of the sixteenth century witnessed a complete aboutface of Protestant theory as respects this doctrine. There can be no doubt that the reverses which the movement suffered from about 1546 onward shook the faith of many Protestants in the efficacy of passive obedience. Mary followed Edward on the throne of England, and severe measures were resorted to in an effort to restore England to the Roman fold. Protestantism was all but stamped out in Italy, Spain and Portugal. The Queen Regent and Primate of Scotland took vigorous measures against the innovators. The Protestant forces within the empire were beaten at Mülberg, and the Catholic authorities took a strong line. Protestants resisted, and in 1548 the clergy of Magdeburg issued a statement declaring that Christians are bound equally to obey Christian rulers and to resist any order contrary to God's law.

The Marian exiles developed the principle that a Godless and tyrannical ruler ought to be resisted. John Knox developed this doctrine fully. He and Christopher Goodman, writing from

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[19] *Ibid.*, Bk. IV, Chap. XX, par. 8.
[20] *Ibid.*, Bk. IV, Chap. XX, par. 29.
[21] *Ibid.*, Bk. IV, Chap. XX, par. 31.

the inordinate appetite of Princes, cannot be accused as resistors of God's good ordinance. To bridle the fury and rage of Princes in free kingdoms and realms, they affirm, it pertains to the Nobilitie, sworn and born to be Councillors of the same, and also to the Barons and People, whose votes and consent are to be required in all great and weighty matters of the commonwealth, which if they do not, they declare themselves criminal with their Princes.[25]

Knox declares that the preservation of the commonwealth is the common responsibility. "Think not," he writes, "that you dwell in safety when your neighbor's house burns." He gave to the commons of Scotland the same human dignity and rights that he allowed to king and nobles. Office conferred special dignity and authority, but these were held simply as necessary to the service of the commonwealth.

One of Knox's noblest statements respecting the political independence and competence for government of the common man was uttered in a debate in the General Assembly of 1564. The issue being debated had to do with the right of the people to resist injustice at the hands of their rulers. Knox asserted that not only is it allowed to Christian people to resist the criminal acts of their rulers, but, where they have power to do so, they are morally obligated to resist aggressors against the rights and liberties of themselves and their fellow citizens. Lethington, Knox's opponent in the debate, answered this assertion, saying:

"Well, I think ye shall not have many learned men of your opinion." "My Lord," Knox answered, "the truth ceases not to be the truth, howsoever it may be that men misknow it or yet gainstand [oppose] it. And yet (said he) I praise my God, I lack not the consent of God's servants on that head."

Knox then handed to the Secretary of the General Assembly a copy of the defense which the ministers of Magdeburg, in Saxony, had made of the right of the people of the Duchy to resist the troops of the Holy Roman Empire. Knox explained the paper and its purpose to the assembly, and added:

"To resist a tyrant is not to resist God, nor yet His ordinance." Lethington contemptuously exclaimed, "Nobodies" *(Homines obscuri)*.

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[25]John Knox, *The History of the Reformation in Scotland*, in *Works*, I, 410.

encroachments of governments upon their liberties,[29] Buchanan anticipates the position as respects this matter of Thomas Jefferson, who urged the importance of keeping alive the spirit of resistance in a people. That the independence and integrity of the individual is the last and most important line of defense of free and just institutions is a truth which history illustrates by many examples. The history of the way in which liberty was preserved in Denmark, Norway, and France by the underground movements of those countries furnishes the latest proof of this ancient maxim. Bodin, who had a great part in developing the modern conception of the State, defined sovereignty as incapable of legal limitation. This doctrine opens the way to acceptance of totalitarianism, and there is no way to meet this argument save by the principle that the legislative power be kept representative of the people. In the last analysis, this can be done only as the individual citizen is constantly watchful and alert to maintain human rights, and insistent that the ruler act only within the pattern of the laws and that the judiciary does not usurp the lawmaking power.

The crux of Buchanan's argument is just here. The right of the people to correct abuses is never alienated. He writes: "We are agreed, then, that once the defects of the laws have been detected, they can be corrected and wiped out by the lawgivers."[30] He goes on to indicate who lawmakers are. He writes:

> I believe that you [Maitland] now agree that those who are born to be our kings are made so by the laws and by the suffrages of the people, no less than those who were elected first, and that there are measures of relief provided to the people, who are the lawgivers, not only against fraud and trickery, but also against negligence in interpreting the laws.[31]

In this position Buchanan had been anticipated time and again by writers of the later Middle Ages and of the Renaissance, and notably by Gerson, who had asserted that where a tyrant persists in doing evil, a people may apply the law of

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[29]Chapter 51. See Thomas Jefferson's letter of 1787 to James Madison: "A little rebellion now and then is a good thing. . . . It is a medicine necessary for the sound health of government."

[30]Chapter 37.

[31]*Ibid.*

people and vest authority in rulers. This approach to the problems of government leaves the way open for the full development of a political theory, the fundamental assumptions of which are the principle of the unique dignity and worth of the individual, and so of the inalienable character of natural rights and of popular sovereignty; the conception of legislation as the creative activity of the state, and the further assumption that a government can be a just one only as legislation is directed in the interest of the general welfare. The elaboration of these principles and the creation of the governmental devices and procedures by which they can become effective was the great concern of political theorists, legislators, and makers of constitutions to the end of the eighteenth century.

Buchanan's peculiar importance as a political theorist is due principally to the synthesis he achieves of ideas from classical antiquity, the later Middle Ages, Scottish history, the Italian Renaissance, and the second, or Calvinist, phase of the Reformation. The *De Jure* contains no single idea which can be said to be wholly new; yet, since a political philosophy is not an aggregate of separate notions, but a system of ideas, each of which is to be understood in terms of its context, Buchanan's system affords a new orientation.

Two examples will make clear the nature of this re-orientation by virtue of a recombination of ideas. From the days of the primitive church, as Buchanan points out, Roman Catholic theory had maintained the supremacy of God's law over the authority of the secular state. Authority to pass upon the moral and religious character of the acts of rulers and to impose sanctions had been vested, according to Roman Catholic dogma, in the hierarchy of the Church. While the Eastern Church had become the docile servant of the Byzantine emperors, the Roman Church had stoutly maintained the religious and moral independence and sovereignty of the hierarchy. In Presbyterian theory, the independence of the Church is maintained, but the idea of an authoritative priesthood is repudiated, and a lay-controlled church established. Calvinists who accepted the doctrine of the limitation of the powers of secular rulers had still the problem of the scope and nature of this limitation; and individual theorists, agreeing at many points, differed at

review[35]—as the ordinary remedy; and proposes to keep the legislative power representative of the people. He maintains the right of armed resistance as the final safeguard of a people's rights. His failure to list the maintaining of orthodox faith and worship as one of the responsibilities of civil government set him sharply apart from Calvin, Knox, the *Vindiciae contra Tyrannos*, and Ponet.

Ponet strains after direct Scriptural support of his political theories. In Buchanan's view, the absence of any Scriptural example which serves as a basis for judgment respecting a proposed law is quite unimportant. Reason should be our guide in most matters. Buchanan avoids completely the morass into which many reformers fell, of regarding only that for which Scriptural precept or precedent could be shown as allowable.

Even more significant is the spirit and method with which Buchanan approaches the Scriptures. He is completely free from the rigid literalness of some Protestant students and from the allegorizing which had characterized biblical studies in the Middle Ages. Instead, he approaches the interpretation of the Bible in the spirit and with the apparatus, so far as it was then available, of historical criticism.

Nothing in Buchanan's *De Jure Regni apud Scotos* is wiser than his view of the state. He does not hold the view, so common among Calvinists of his time, that the one lawful government is a theocracy. Instead, he refuses, at one point, to argue from the history of Israel, holding that Israel was unique in that God had chosen its kings.[36] Buchanan does not even entertain the theory of the patriarchal origin of kingship; and he expressly attacks the notion that kings are kings because of any natural superiority, or that they can establish lawful kingship by conquest. In his view the government which is in accordance with nature is a royal and political government, which is a leadership of free men by a free man.[37] He rejects, also, the Machiavellian conception of the state as the creation of force and craft, acting upon the fears, greed and ambition of men.

[35]Chapter 27. "Tyranni enin et Graecis et Latinis vocabantur, penes quos erat libera omnium rerum potestas, nullis legum vinculis adstricta, aut judicum cognitionibus obnoxia."

[36]Chapter 40.

[37]Chapter 29.

A peculiar importance attaches to the *De Jure* because of its place in the development of Puritan, Huguenot, and Presbyterian political theory, a place indicated at the beginning of this chapter. Historians assign to the political philosophy of sixteenth-century Calvinism a place of particular importance in the struggle for civil and religious liberty. David Hume, who was surely no great admirer of the followers of Knox and Cartwright, says:

> [It appears] that the republican ideas of the origin of power from the people were at that time [about 1607] esteemed as Puritan novelties.[39]

Professor Trevelyan writes of the "democracy of laymen" which arose in the parishes of Presbyterian Scotland, and of the national organization effected through the General Assembly of the Church of Scotland which became the organ of the national life and "the focus of resistance to the crown."[40] J. R. Green declares, "no Church constitution has proved in practice so democratic as that of Scotland."[41] Lord Eustace Percy calls the political philosophy and convictions of the Calvinist political theorists of the sixteenth century, in spite of tendencies in them which were productive of much harm, "the parent of the liberal movement in Holland, Great Britain, and America."[42] Mr. R. H. Tawney, a severe critic of certain tendencies in Scottish Presbyterianism and English Puritanism, notes one strain of British Calvinism which "was to leave, alike in the old world and the new, an imperishable heritage of civil and religious liberty."[43]

Buchanan was certainly one of the most liberalizing and ameliorating forces in the entire reformation movement. He did not fall into the error of making purity of faith and worship an aim of government, an error into which Calvin, Ponet, the author of the *Vindiciae contra Tyrannos*, and Knox, along with their opponents, all fell. He met the new obscurantism of the

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[39]David Hume, *The History of England* (Philadelphia, Lewis and Baker, 1810), V, 469.

[40]A. M. Trevelyan, *The History of England* (New York, Longmans, Green and Co., 1933), p. 335.

[41]J. R. Green, *A Short History of the English People* (New York, American Book Company, 1916), p. 523.

[42]Lord Eustace Percy, *John Knox*, p. 111.

[43]R. H. Tawney, *Religion and the Rise of Capitalism*, Pelican Edition, p. 165.

PART II

Buchanan's "The Powers of the Crown in Scotland: A Dialogue"

A LETTER TO JAMES VI, IN WHICH BUCHANAN PRESENTS THE DIALOGUE TO HIM

Some years ago,[1] at a time of great public disturbance, I wrote this dialogue respecting *The Powers of the Crown in Scotland*. In this treatise I attempted to trace, from their beginnings, the rights and the respective powers of the king and of citizens.

At the time it was written, the book seemed to have some value for silencing those who—more by dangerous outcry than, as would have been right, by recourse to reason—sought to correct the state of public affairs. Later, as the country became somewhat tranquil, I freely laid down the weapons of conflict and devoted myself to promoting harmony between factions. Recently, I came upon this treatise, among my papers, and noting in it a number of items with which it is necessary that one of your age—and especially one who occupies a pre-eminent place in human affairs—should be familiar, I decided that it should be published, both that it may serve as a testimonial of my attachment to you and that it may remind you of your duties toward your people.

A number of things give me confidence that this effort on my part will not be futile. I am most encouraged by the fact that you are at an age when you have not been corrupted by false notions; and that your disposition to undertake, freely and eagerly, matters of the utmost importance, is much superior to what is usual in one of your age; that you not only comply readily with the suggestions of your teachers, but with those of anyone who gives you wise counsel; and that the quality of your judgment and sagacity are such that you are swayed by a person's advice only to the extent that it is confirmed by tested evidence.

I know, moreover, that your nature ever impels you to avoid that nourisher of tyrants and disease of legitimate governments, flattery; and that you dislike the absurdities and artificial

[1] "Some years ago. . . ." Buchanan's *De Jure Regni apud Scotos* was first published in 1579. References, early in the dialogue, to the murder of Darnley, which took place February 10, 1567, and Mary's abdication, which followed closely after this crime, indicate that the dialogue was written about 1567 or 1568.

already laid the foundations of his fame, and so to fulfil the promise of his studies. For, I indicated, if I, a man of moderate ability and almost no fortune, have so exerted myself in the midst of the unfavorable conditions of an untutored age that I seem almost to have distinguished myself, certainly those born in a happier time, who have the endowment of age, means and talent should not be deterred from any honorable enterprise by the labor involved. They should, indeed, endeavor, with all their might, to advance literature, and to cause posterity to have both them and all of their nation in grateful remembrance. For, if such persons would put forth but a little effort, they might remove from men's minds the notion that people in the colder regions of the earth are as far removed from letters, the humanities, and liberal culture as they are from the sun. For, although nature has granted to the Egyptians, Africans, and many other peoples special quickness of mind and sharpness of wit, she has, surely, never doomed any people to exclusion from nobility of character or from honor.

Maitland, in replying, was very diffident in what he said of himself—for he is a modest person—and his remarks respecting myself reflected rather his affection for me than what was warranted by my merits. The course of our talk led, eventually, to his inquiring of me about the troubled situation in our own country. I answered him as best I could, and, in turn, I began to question him as to what the French and other peoples of the continent of Europe thought about the situation in Scotland. For I was confident that the unusual condition of affairs here had furnished everyone both the occasion and topic of talk.

"Why," he inquired, "do you ask me this? You understand the fundamental issues, and are not uninformed respecting what is being said on every side and how almost everyone feels; so that you can easily arrive at an idea, on the basis of what you yourself know, as to what the general consensus of opinion may be—or, at any rate, what it ought to be."

Buchanan: I cannot altogether agree with you. The further people are from a situation the less they are affected by anger, hate, affection, and other disturbing emotions which cloud the judgment. The less they are involved, moreover, the better can they think through an entire situation without bias, and the

What crime against worth or greatness can be too vile for persons who vent their rage against royalty in such a fashion? What place do those leave for pity who are restrained neither by the weakness of sex nor the innocence of youth? Right, customs, laws, respect for government, reverence for duly constituted authority—which will hereafter be either repressed in ignominy or surrounded with fear, where the power of the sovereign is at the mercy of the violence of the basest elements of the population—will degenerate into complete barbarity in a society in which the distinction between equity and injustice, baseness and honor is almost by common consent, removed. I am sure that I shall hear these things, and even worse, on my return to France; and that all ears will be closed to any reply or explanation.

Buchanan: I, on the other hand, shall easily free them from their fear, and our people from this false charge. For if they [the foreign critics of Scotland] abhor the wickedness of the first crime so greatly, how can they consistently censure the severity of the punishment? Or, if they are vexed that the Queen has been humiliated, they must approve the first [Darnley's murder]. Choose, then, which of the two appears the more horrible: for neither they nor you, if you wish to be consistent, can praise or blame both.

[Chapter Two. Maitland Deplores the Fashion in Which the Queen Had Been Dealt With, and Buchanan Takes Occasion to Introduce His Thesis—Rulers May Properly be Held Acccountable for Their Acts.]

Maitland: I do, indeed, think of the murder of the King with loathing and horror; and I am gratified that the guilt of the deed does not lie on the public conscience, but is chargeable to the wickedness of a few persons. I can not, however, either praise or denounce what came later without reservations. The prudent and tireless investigation of the crime—the most wicked in human history—and the armed pursuit of the criminals seems to me a praiseworthy and remarkable achievement.

But I am uneasy as to how the peoples of Europe, and particularly those of the absolute monarchies, will take the hum-

their own eyes. In their view, the extent to which anything departs from what they have long been accustomed to, is the exact measure of the extent to which it has departed from right and justice. These people—who are not swayed by malice, spite, or self-interest—will submit to instruction and to having their errors corrected, for they yield if they are conquered by force of argument. In the field of religion, we have learned—as had an earlier age—that there is well-nigh no man "so wild as not to be tamed, if he will but patiently yield to instruction."[5]

Maitland: Experience certainly supports your view.

Buchanan: When you deal with any member of the clamorous, restless mob, ask him what he thinks of Caligula, Nero, or Domitian. I believe that no one of them will be so besotted by the name of royalty that he will not acknowledge that these men were justly punished.

Maitland: Perhaps you are right, but there are some who will insist that they do not question the justice of the humbling of tyrants, who are distressed at the undeserved calamities of legitimate rulers.

Buchanan: Do you not see how the mob can easily be won over?

Maitland: Not unless you can explain further.

[Chapter Three. The Distinction Between Tyrants and Legitimate Rulers Is Seen to Have a Bearing on the Matter at Issue.]

Buchanan: I can clear this matter up in a very few words. The people—you claim—approve of the execution of tyrants, but pity the misfortunes of kings. Do you not think that their feelings, in many instances, would be different if they were taught the distinction between a tyrant and a king?

Maitland: It is true that if everyone would acknowledge the propriety of putting tyrants to death, the way would be opened to the solution of other matters. But I know some persons—men whose standing is not to be despised—who, while they

[5]Horace, *Ep.* I. i. 40.

Maitland: I could, very easily, say what my ideas of both are; but I fear my notions are crude and unformed; so that I prefer to hear what you—my superior in both age and experience—think, lest time be lost while you are examining my notions; for you are not only well informed respecting the opinions of other persons but have observed the customs and governments of many lands.

Buchanan: I shall be very glad to comply; but I am going to recount the ideas of the ancients, rather than advance any original ones of my own. This will give my discourse the more weight, since it is not composed to fit the immediate situation, but is drawn from the ideas of men who had no connection with this controversy. Their opinions were expressed without hatred, favor or rancor, for the issues did not affect them. I shall draw especially upon the ideas of men who were not content to remain in obscurity all their lives, but who—citizens of well-governed nations—attained reputations for integrity and foresight, both at home and abroad. But, before I present these witnesses, I wish to ask a few questions, in order that we may be agreed on some matters; and so may not find it necessary to digress from the main course of the discussion, nor to delay for explanations or proof of matters which are quite clear and are of common knowledge.

Maitland: I think that this should be done; so, ask me what you will.

[Chapter Four. Governments Owe Their Origins to Man's Original Nature, Not to Their Utility in Serving His Selfish Interests.]

Buchanan: Do you not think that there was a time when men lived in hovels or even caves, and wandered about as lawless vagabonds, without any rooted culture? And that they congregated as some caprice or as some convenience or something else of advantage brought them together?

Maitland: Yes, I think that this is agreeable with the law of nature, and that it is also substantiated by all historians, everywhere. Homer pictures society, at the time of the Trojan War, as being thus rude and barbarous.

that, although the blandishments of expediency may be lacking, they, nevertheless, associate voluntarily with others of their kind. For the rest, there is now no question about the matter. This impulse is so deeply rooted in mankind by nature, that though a person had every possible thing to make him personally secure, and which would contribute to his sensory enjoyment or to delight his mind, he would, nevertheless, find life insupportable without human society.

Those who, on account of love for knowledge, seclude themselves and live in hidden corners are never able to endure their mental labors for a long period; nor can they live alone when they leave these labors off. Moreover, they voluntarily publish their private studies; and, having labored for the public welfare, they offer to society the fruits of their efforts. Persons who are so attracted to solitude that they flee from human society and avoid it, do so, I am convinced, rather because of diseased minds than because of some natural impulse. Such, we understand, was the case of Timon of Athens and Bellerophon, the Corinthian:

> Who wandered, miserable and solitary, on the Aleian coasts,
> eating his own heart, and shunning the foot-prints of men.[9]

Maitland: I am in substantial agreement with you. However, you use the word *Nature*, which I employ more as a habit of speech than because of any clear concept which I have. This term is used in such a variety of contexts and of so many things that I am puzzled as to what meanings I may attach to it.

Buchanan: For the purposes of the present discussion, I wish it understood only as it means the light divinely shed upon our minds. For when God formed

> The animal made in His own image, endowed with reason,
> and gave him dominion over the beasts,[10]

He not only gave him the physical senses, by the use of which he can avoid all that endangers him and can maintain situations favorable to his well-being, but he also created in his spirit a light by which he distinguishes between good and evil.

[9] *Iliad*, vi. 200–202.
[10] Ovid, *Met.* i. 76.

disturbances and internal uneasiness; so, of necessity, the men associated in these bodies which we call states are of diverse and often of opposing sorts, classes, conditions and natures. Of these none "Can remain for an hour in agreement about anything."[14] It is certain, in short, that they would separate and go to ruin, unless there were a physician employed to cure diseases, to strengthen the weaker parts with applications, in which soothing and health-giving properties are combined in right proportions, to check the excess of the fluids, and to look after several members, in order that no weak part might pine away for lack of nourishment nor other part grow overstrong.

Maitland: Clearly, this is essential.

Buchanan: But who shall do this for the body-politic; and by what name shall we call him?

Maitland: I am not greatly concerned about the name. I am of the opinion that, no matter by what name you call him, he who does this will be most eminent and godlike; and it is evidence of the foresight of our ancestors that they honored a most illustrious office with a most distinguished name. For I believe that you are thinking of the name king; and such is the force of that word that it presents, almost to the physical senses, a thing great and illustrious.

Buchanan: You are right. For we address God by this name, and have no more illustrious title by which we may declare the exalted character of his glorious nature; nor have we any title more suitable for showing his father's care over us and concern for us. What other names may I list which may carry the idea of the duties of a king? Are they not such terms as Father Aeneas, Agamemnon, Shepherd of the People, also Leader, Prince, and Governor? In all of these terms there is an implication that the king has been set up, not to serve his own interests, but for the good of the people. As respects the name, we are, it appears, agreed. Let us discuss the duties of the office: following the same course as heretofore.

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[14]Horace, *Ep.* I. i. 82.

Maitland: Yes, indeed, and there seems to be this further point: that the fluids of the one and the customs of the other should be brought to a due moderation.

[Chapter Six. The All-Inclusive Function of Government Is the Maintenance of Justice.]

Buchanan: That is correct. For, in my opinion, there is, for the body-politic, just as for the human body, a balance or harmony of functions which we, with perfect fitness, call justice. Justice protects the interests of the particular members, and governs them as they discharge their respective functions. In the human body this governing is accomplished by bleeding and by the use of vomits and purgatives—thus expelling hurtful substances, by cheering persons in low spirits and consoling the despairing.[14a] In such fashion the human body is brought to the balance and harmony of functions of which I spoke, and once good health is established, this condition is maintained, so far as this can be done, by rest and exercise in due proportion.

Maitland: I agree to everything you say, save that you subordinate the harmonious functioning of the body-politic to justice; whereas, by its very name and declared character, this harmonious functioning seems to claim its place in its own right.

Buchanan: It doesn't, in my opinion, matter a great deal to which of those you give precedence. For all good traits the strength of which is proved in action are maintained in a certain measure and balance with respect to each other; so that they are interdependent and mutually allied. As a result, there seems to be a single function of all, and this function is the control of inordinate passions. The name by which this harmonious relation of parts, as it shows itself in various ways, is called is quite unimportant. When, however, this harmony is maintained in a commonwealth and with respect to the

[14a]The figure of the magistrate as the physician of the body politic is to be found in Chrysostom, *The Acts of the Apostles, Homily LII.* Both Chrysostom and Buchanan must have known the figure from Aristotle, *Politics*, III. xi. 5, 6.

skills of this art? Should we accept a man as regularly a physician so soon as he has been elected by popular vote?

Maitland: Not in the least, for a man becomes a physician by instruction and by experience in many sorts of arts, not by being elected.

Buchanan: How are the practitioners of the other arts created?

Maitland: I think that there is the same way for all.

Buchanan: Do you thing that there is any art or profession of government?

Maitland: Why should there not be?

Buchanan: Can you give any reason for your opinion?

Maitland: I believe that I can—to wit, the reason generally assigned in connection with the other professions.

Buchanan: Please explain.

Maitland: The entrance to all the professions is by way of experience. For, although any number of persons attempt all sorts of things without any knowledge of what they are doing, and other—empirics—are guided by experience and custom, wise men, noting phenomena on every hand and pondering the causes of events, have developed systems of knowledge, and this organization of art and knowledge they call a profession.

Buchanan: Is it possible that, by a process similar to that which has given us the science of medicine, a science of government could be developed?

Maitland: I believe so.

Buchanan: What is its content?

Maitland: I cannot say with certainty.

Buchanan: May we examine it by comparing it with the other professions?

Maitland: Just how?

Maitland: We have.

Buchanan: And I suspect that we did not look into the matter with sufficient care before we did so.

Maitland: Why do you say that?

Buchanan: Because it is clearly absurd that a person should, if you please, be a master of a profession, and, notwithstanding, should be no professional man.

Maitland: Absurd indeed!

Buchanan: But we regard a man who performs the duties of a profession adequately as a master of it, whether he is quite untaught or has acquired his facility by unremitting and sustained exercise and practice.

Maitland: I imagine so.

Buchanan: We shall, then, call that man the master of his profession who has the art and science necessary for its successful practice, no matter how he has acquired this facility.

Maitland: And much more appropriately so than a person who has the bare theory, without experience and practice.

Buchanan: May we not regard a theoretical system as an art?

Maitland: No, but as a sort of likeness or, more accurately, a shadow of an art.

Buchanan: What, then, is this ability to govern, which we call the art and science of politics?

Maitland: You seem to be saying that it is reason, from which, as from a fountain, all laws which are of value for the preservation of human society must flow or be derived.

Buchanan: Precisely. And if a person possesess wisdom in the highest degree and without flaw, we may say of him that he is a king by nature, and not by virtue of the people's choice. To him we may entrust independent and unlimited power. If, however, no man who completely fills these specifications can be found, we shall call that man king who, having the

there is, nevertheless, one point in our discourse with which I seriously disagree, and which I do not believe that I should pass over in silence. You have clearly been unfair to kings. I had frequently suspected this of you in the past, when I frequently heard you so profuse in your praise of the ancient commonwealths and of the government of Venice.

Buchanan: You have not been interpreting me correctly. I am not so much concerned about the form of governmental administration among the Romans, Massilians, Venetians and others among whom the authority of the laws was superior to that of men as I am about the equal administration of the law. I do not believe that it is any great matter whether the chief magistrate is called King, Duke, Emperor, or Consul, so long as it is understood that he is placed in office to maintain justice. So long as government be just, we ought not contend over names.

For ~~him~~ whom we call the Duke of Venice is nothing more nor less than a king under a constitutional government; and the first consuls retained not only the insignia but also the powers of royalty. The consuls differed from the usual pattern of kings only with respect to the fact that two of them reigned simultaneously—and this, as you know, was the custom in Laconia throughout her history—and that they were not chosen to office for life, but for a year at a time.

It is, therefore, reasonable to stand by the position we have announced from the first, that kings, initally, were set up to preserve justice. If they had been able to have kept their exercise of authority as they had received it—that is, released and made free under the laws—they might have kept it in perpetuity. But, as is always the case in human affairs, matters degenerated, and the authority, which was established to serve the public interest, became an arrogant overlordship. For—since the arbitrary will of kings supplanted the laws, and men invested with unlimited and undefined powers did not regulate their conduct by reason but allowed many things because of partiality, many because of prejudice, and many because of self-interest—the arrogance of kings made laws necessary. For this reason, therefore, laws were devised by the people, and

if kings were thought of as of the type found in the past—men taken from their herds or the plough, who received this awesome dignity.

[Chapter Twelve. Governments Exist for the Maintenance of Right.]

Buchanan: Consider how greatly you have strayed into error in thinking peoples and nations desired to have governments, not for the maintenance of right, but that kings might enjoy themselves; and in measuring opportunity for distinction in terms of great show of wealth and pleasure. Think how you diminish the stature of princes by such a position!

Now, in order that you may understand the matter the more readily, compare some king whom you have seen decked out like a child's doll and paraded in great ceremony and with a prodigious hubbub in order to make an empty show: compare such a one, I say, with kings celebrated in ancient times, whose memory lives and grows, and is honored by posterity. These last were such men as I have been describing. Have you never heard this story of Philip of Macedon? He was petitioned by an old woman to hear her case, and replied that he did not have time. To this she answered, then you should reign no longer. Have you not heard, I say, that that king—victor in many wars and master of many nations as he was—being reminded of his duty by a poor old woman, performed it, and acknowledged that this [*i.e.*, the maintenance of the right], was the concern of kings?[17]

Compare Philip not only with the greatest kings of contemporary Europe but also with those of the past; and, surely, you will find no one of them his equal in judgment, courage, or industry, and but few who were as wealthy as he.

If I were to call over the names of the Spartan kings, Agesilaus, Leonidas and the rest—what men those were!—I should be thought guilty of using outmoded examples. I cannot, however, pass without mention of the saying of a Spartan girl, Gorgo, daughter of Cleomenes. This girl saw the servant of a guest, an Asiatic, pulling off his master's stocking, and running

[17]Plutarch, *Regum et imperatorum apophthegmata.* 179 C 31.

I think that you can see from these words what Cicero regarded as the reason for wishing to have both kings and the law.

I could, at this point, commend Xenophon, a man no less eminent in military matters than in the study of philosophy, as a witness and guarantor of this same position; but I am aware that he is well known to you, for you have notes on all his writings. I omit Plato and Aristotle for the present, though I am not ignorant of the high esteem in which you hold them. For I prefer to cite in support of my position men distinguished rather in the world of action than men from the retirement of the schools. I am even less inclined to suggest the name of a Stoic king, such as is described by Seneca in his *Thyestes;* not that his conception of kingship falls short of perfection, but because his model of the good prince is of value rather as an intellectual exercise than as a practical possiblity. Moreover, lest there be ground of criticism against any of my illustrations, I have not spoken of kings from the Scythian desert, who either tended grazing horses or performed other labor, a practice inconsistent with our usage. But I have chosen as my examples Greeks, who ruled great nations and prosperous cities at the time when the fine and the liberal arts were flowering in Greece—men who governed in such fashion that their people honored them very greatly while they lived and posterity accorded them the highest reputation after their deaths.

[Chapter Thirteen. Maitland Is Convinced that there Is Much Evidence in Support of Buchanan's Position, and Leaving the Matter Open, Suggests that They Turn to a Discussion of the Nature of Government. The Friends Summarize the Points on which They Have Found Themselves in Agreement.]

Maitland: Indeed, if you ask me now what I am thinking of, I scarcely venture to acknowledge my instability of mind, or timidity, or whatever my vice may be called. For, to be sure, I have often read in books well known to historians of the matters of which you are speaking and I have heard them commended by scholars of the very highest standing—men whose opinions

Maitland: How is that?

Buchanan: The value of some of them is for the preservation of health, and of others for its restoration.

Maitland: True.

Buchanan: What of the art of governing?

Maitland: I think that there are many sorts of principles here, also.

Buchanan: It seems then that we should take this up next. Do you believe that physicians can be such masters of all knowledge of diseases and their remedies that nothing further can be asked for their cure?

Maitland: Not in the least. Many new diseases arise in every generation; and almost every year, man's industry either discovers new remedies for each of them or imports them from a distance.

Buchanan: What of the laws of sovereign states?

Maitland: The same rule clearly applies to them.

Buchanan: Then, neither the rulers of states nor physicians can either prevent or cure every ill by the application of the principles of their arts as they are written down and delivered to them.

Maitland: I think that, certainly, they cannot.

[Chapter Fourteen. The Next Question: What Is the Rõle and Nature of the Law?]

Buchanan: Let us now inquire what things can properly be enacted as laws of states, and what cannot be taken account of by the law.

Maitland: This is a topic well worth our time.

Buchanan: It appears that many and weighty matters cannot be covered by the laws. First among such matters are those respecting decisions which must be made at some future time.

Maitland: Yes, all of these.

Buchanan: But judges, I understand, render their decisions in accordance with the principles of law.

Maitland: They do, indeed, so render them; but I conceive that there is little which can be safeguarded by the laws, compared to that which cannot be so safeguarded.

Buchanan: There is an additional problem of no less difficulty—not everything for which laws are required can be comprised under fixed rules.

Maitland: How so?

Buchanan: Lawyers, who assign a very high place to their profession, and wish to be regarded as priests of justice,[21] concede that the variety of problems is so great as to appear well-nigh infinite, and new crimes—as it were, several sorts of sores—daily arise in states.

Maitland: One would have to be divine to accomplish more than a little.

Buchanan: There is this other difficulty, and it is no small one: change is so marked a condition of human life that no art can secure in advance an unvarying and lasting system.

Maitland: Nothing could be truer.

Buchanan: Then it seems the safer thing to trust the health of a patient to the skilled physician and the character of the state to the ruler. For, frequently, beyond the rules of his science, the physician may cure a sick person, with or without the patient's consent; and so, also, may a king establish a new and, none-the-less, useful law—the citizens being either persuaded of its value or opposed to it.

Maitland: I can see nothing to prevent it.

Buchanan: Now in view of the fact that they both act in this fashion, does it not appear that each of them makes his own laws?

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[21]Compare Fortescue, Sir John, *De laudibus legum Angliae.* iii.

Maitland: In what respect?

Buchanan: In this, that we have liberated both of them from slavish dependence upon rules, having conferred upon each of them the authority to practice according to his own judgment.

Maitland: What is there in this course which disturbs you so greatly?

Buchanan: Hear me out and form your own conclusion. We have agreed that there are two reasons why it is not good for a people to release their rulers from the restraints of the laws; namely, love and hatred, which influence men's minds to the defeat of justice. But there is no danger that a physician will do wrong because of his affection for the patient he is attending, for he looks for his recompense in the restoration of his patient to health. If, moreover, a patient learns that his physician is being tempted by entreaties, promises or bribes to take his life, he is free to choose another physician, or, if there should be none available, I think it were safer to seek a remedy in books, deaf though they be, than in a bribed physician. But, since we earlier took exception to the indifference of laws to human values, let us see if we are being consistent in the positions we are taking.

Maitland: How so?

Buchanan: The ideal king, whom we can see rather with the eyes of the mind than with those of the body, is not, we are agreed, hampered by laws.

Maitland: Not at all.

Buchanan: And what is the significance of this?

Maitland: Following Paul, I believe that he should be a law unto himself and unto others in order that he may exhibit in his own life what is commanded by the laws.

Buchanan: Your reasoning is correct; and that you may, possibly, hold the law in the deeper reverence, I add that long before Paul wrote, Aristotle, guided solely by the light of nature, understood this. But, in order that you may see the more clearly what was proved earlier, I repeat, "the voice of

Maitland: I can almost grasp your meaning; namely, that they had in mind the image of the perfect king, and, so far as they were able, they modeled what they produced upon this, producing a likeness not of a material body but of an idea—a king who will wish to have as laws what he thinks good and just.

Buchanan: You follow me perfectly, for that is precisely what I wished to say. And, next, I wish you would think what sort of ruler we set up, from the first. Was he not firm in resisting the influence of hate, affection, anger, envy, and the other forces which unsettle the mind?

Maitland: We did indeed form him so; or, so we believed him to have been among men of earlier times.

Buchanan: But do laws seem to you to be made like this?

Maitland: Not at all like this.

Buchanan: And a good king is no less unbending and inexorable than a good law.

Maitland: He is equally firm. But since I can change neither —nor ought I wish to do so—I do desire to render both somewhat more flexible, if I may.

Buchanan: God, however, wills that in judging we should not show compassion on account of poverty; but bids us regard right and justice, and to pronounce judgment with respect to that alone.

[Chapter Nineteen. If the Government Is Indeed to Be of Laws and Not of Men, Have We Not Set up a New Absolutism?]

Maitland: I recognize the good sense of your statement, and am overcome by the truth. But, inasmuch as it is not possible to loose the king from the bonds of the law, who will be the lawgiver? Whom shall we set up as a teacher?

Buchanan: Who, do you think, is most capable of preserving authority?

Maitland: It appears that nothing could be less appropriate.

Buchanan: Why so?

Maitland: You know the expression, "A monster with many heads."[25] You are aware, I believe, how impulsive the masses are—how fickle.

Buchanan: I never thought that the management of affairs should be left to decision of the whole people; but that, according to our custom, selected persons from all ranks should join with the king in council; and when, at length, a decision is arrived at between them, it should be submitted to the people's judgment.

Maitland: I understand your plan very well; but you seem to me to help the situation not at all by these excessive precautions. You do not want a king who is above the law. Why? Because, as I recall, two most cruel monsters, lust and rage, carry on, within every man, an eternal war with reason. Laws are desired which may restrain their license, and, as they run to excess, to call them back to respect for rightful authority. But what of those counselors furnished from the people? Are they not troubled by the same inner conflict? Are they not affected by the same evils as is the king? To the extent that you increase the number of assistants which you associate with the king, by so much do you increase the number of blockheads. You understand what may be expected of that.

Buchanan: On the contrary, I anticipate something very different from what you are thinking; and I will tell you why I do anticipate it. First, your idea, that the assembling of a great many people—among whom there are perhaps none of exceptional ability—is a futile business, is not universally true. For not only does the assembly see and understand more than any one of its members when taken singly, but it sees and understands more than a person, even, who excels any individual of the crowd in cleverness and practical judgment. In-

[25]Horace, *Ep.* I. i. 76. Cf. Pomponius Porhyrius, *ad h.l. fabella ergo Aesopia inter se repugnantiam hominum dicens beluam multorum capitum esse.* Cf. also L. Sternback, "De gnomologio Vaticano inedito 121," in *Wiener Studien,* X (1888), 23. Sternback refers also to Proclus on Plato's *Alcibiades,* I, Vol. I, 1 sq. (Creuzer).

[Chapter Twenty-one. Buchanan Proposes that the Law Be Interpreted in All Cases by Lawyers, a Position to Which Maitland Objects.]

Buchanan: You are quite right. Moreover, as you may have observed, throughout this entire discussion, I have been striving exclusively for this one thing—that the Ciceronean principle, "The public welfare is the supreme law,"[28] might be held in reverence and perfectly observed.

Therefore, if a case of a complex sort comes up for decision, in order that what is just and right may not be hidden, it would be the duty of the king to see to it that the law be applied according to that rule which I have just quoted. But you appear to demand more in the king's name than the most domineering of them arrogates to himself. For you know that a question of this sort—where the law appears to say one thing and the legislator to have intended another—is commonly referred to legal experts; just so, certain laws arise from the fact that some right is ill-defined, or from some conflict of the laws. It is on this account that in connection with interpretation the most serious issues arise between lawyers, and the maxims of the masters of the law are carefully expounded.

Maitland: I know that these things are done just as you describe; but it seems to me that the laws are harmed no less than are kings in this procedure. For I hold that it is better to bring litigation promptly to a conclusion through relying upon the judgment of one good man than to entrust the power rather of concealing the laws than of explaining them to clever fellows, and sometimes to rascals. For in cases when a contest is sustained not only for the sake of the interests in litigation, but also in the interest of the reputations for brilliance of the opposing attorneys, the issue of right or wrong, justice or injustice, is lost sight of, or is brought into jeopardy.

Buchanan: You appear to have forgotten the proposition upon which we agreed earlier.

Maitland: What is that?

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[28]Cicero, *De Leg.* iii. 8.

are designed to admonish a good prince respecting his duties, and to restrain a bad one. On the contrary, I tell you frankly, it were preferable to have no laws at all than that, under the pretext of law, liberty to rob should be tolerated and even honored.

Maitland: Do you believe that any king would be so insolent as to have no regard for the reputation and respect in which people generally hold him; or, that he will so far forget himself and his people that he will fall into the vices of the very persons whom he has controlled by humiliation, imprisonment, confiscation of goods—in a word, by the heaviest punishment?

[Chapter Twenty-two. Buchanan Cites Examples to Show the Dangers to Be Expected from Absolute and Arbitrary Rulers.]

Buchanan: We could not believe that such things could be, save that they have been done these many years past, to the very great hurt of the whole world.

Maitland: Where do you claim that such things have been done?

Buchanan: Where, do you ask? As if all nations of Europe had not only seen, but also felt with how much evil the unbridled liberty—I do not say the arbitrary power—of the Roman Pontiff has plagued human affairs. No one is ignorant that nothing less is to be feared by the unwary from that liberty, which came from such modest and apparently honorable beginnings. At first, laws were proposed to us, not only as drawn from the deepest secrets of nature, but as given by God himself, revealed by the Holy Spirit through the prophets, and at length, by God, the Son, and to the same effect testified to of God, commanded in the writings of most excellent men, portrayed in their lives and sealed with their blood. Now there is no topic in the law which is more carefully, more agreeably, or more plainly explained than that which deals with the official duties of bishops. So long as it was permitted to no one to add anything to these laws, or to subtract from them, or to change them, the interpretation remained constant. But when the Bishop of Rome appropriated the interpre-

What could be plainer than this law and what could be said more clearly? The one wife is explained to mean one church. As if the law were established to repress the avarice of bishops, not their lust. But this explanation, although it is not at all to the point, contains an idea which is thoroughly honorable and good, if the Pontiff had not turned about and made the law of no effect by another interpretation. What then does the Pontiff devise? It varies, he says, from person to person, from case to case, from place to place, and from time to time. Some are of such distinction that no quantity of churches can satisfy them. Again, certain churches are so poor that they hardly suffice for the support of a monk—lately a mendicant, now mitered—if he wishes to maintain the title of Bishop. By means of this ingenious interpretation of the law, a scheme is devised under which but one of a bishop's churches is said to be his, the others are committed to his care—all are plundered. If I wished to display all the tricks devised against this one law, there would not be time enough for me to do so; but though these things are unworthy of the name of Priest and of a Christian man, the tyranny does not consist in them. For it is universally true that once things begin to rush headlong on the downward road, they stop for nothing until they fall into utter destruction. By what notable example would you have me prove this? Do you recall among the emperors of Roman blood anyone who was more cruel or wicked than C. Caligula?

Maitland: I have known of none.

Buchanan: What do you consider the worst crime he ever committed? I do not refer to those which the Roman chief priests reckon among those reserved, but in the remainder of his life.

Maitland: What this may have been doesn't occur to me.

Buchanan: What do you think of his having invited his horse, Fastmover,[33] to eat supper with him? Of his having set before him a golden service? Of his having him declared Consul?

Maitland: All of it was most wickedly done.

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[33]Suetonius, *Gaius Caligula.* lv.

refute your contention respecting the importance of this power, but it clearly specifies that they did not deny to themselves the power of handing down legal opinions—a power which they delegated to others—if they wished to assume the duty, and the pressure of other business permitted them to do so.

Buchanan: What can be proved by these Roman emperors? These men were elevated to power, without the slightest regard to due process of law or to the public interest, by their own soldiers. They do not conform to the pattern of that king whom we have described; for those who were chosen by these utter scoundrels were well-nigh the most vicious of men; or they ruled because they had seized the office by force.

Now I do not find fault with them because they delegated the power of giving legal opinions to jurists. For although that power is very great, as I said earlier, it is, nevertheless, committed with the greatest degree of safety to those in whose hands it cannot become an instrument of oppression. It was moreover committed to very many, so that each held the other to the path of duty; for, if any one deviated from the right, the others refuted his positions. And if they conspired to defeat justice, the ruling of the judge was superior, for it was not necessary for him to regard the opinions of the legal experts as law. And the Emperor was superior to all; it was in his power to impose punishments for violations of the law. The lawyers, being bound by so many chains, were controlled; for they feared a penalty which outweighed the reward which they anticipated. You see, I suspect, that the danger to be feared from men of this sort is not very great.

[Chapter Twenty-four. The King Who Rules Wholly in Accordance with the Law and Through Legally Constituted Officials Is Both More Powerful and Freer Than Is the Tyrant.]

Maitland: Are you not going to say anything further about royal government?

Buchanan: First, if it meets with your approval, let us assemble the little which has already been said; so that we may understand the more easily if anything has been omitted.

as may show the way, not such as will lead in it—I do not want persons as helpers who actually drag the king along as though they were propelling some machine; nor do they leave the king any power save that of agreeing with them. And so, I expect that, presently being done with this discourse on royalty, you will turn to tyrants or something of the sort. For you have shut the king up within such narrow limits that I am afraid lest, if we should continue, you would consign him, stripped of his great wealth and supreme dignity, to some uninhabited island, where denuded of all honors he will grow old in poverty and misery.

Buchanan: You feared, as you earlier professed, the crime of double dealing. Now I fear, lest you wrong with calumnies the king whom you are trying to protect. First, I do not wish him to be idle, unless you wish your master builders to be idle statues. Second, you deprive him of good helpers and friends—whom I had not imposed upon him as guards, but wished them to be invited by the king to share his work; and, these having been driven away, you surrounded him with a band of rogues, who make him betray his own people. Moreover, you do not think that he will be formidable, unless we entrust to him great power of doing evil. I wish that he may be beloved by his people: protected, not by the fear of his citizens of him, but by their love. These arms alone make kings invincible. Unless you object to my going on, I hope, shortly, to prove this. For I shall lead him from what you call imprisonment into the light. And I shall give him, by one law, so much authority and liberty that he will appear impudent if he wishes more.

Maitland: I shall be exceedingly glad to hear you out.

[Chapter Twenty-five. The Purpose of the Laws May Be Defeated by Trickery.]

Buchanan: I shall, therefore, begin, in order that I may gratify your wishes as quickly as I may. A little while ago we agreed that no law can take every contingency so clearly into account that evil minds can make no opening for trickery. This may, perhaps, be the more readily understood by means

in order that he may relieve the state of evil practices, to do the same?

Maitland: I believe that this cure, though severe, is the proper one.

Buchanan: And if one can employ it, there would, I believe, be need for but few laws.

Maitland: That is true indeed.

Buchanan: Do you not regard the person who can administer this remedy as conferring, single handed, more benefit upon the public than all the multitude of all ranks, assembled for the purpose of passing laws?

Maitland: Far more, I have no doubt. But, to employ the words of the comic poet: "Who is so strong as to undertake so much?"[35]

Buchanan: What if we turn over the greater part of it to the king?

Maitland: What indeed! You have committed to the people what was agreeable and easy; but anything that is difficult and unpleasant, you turn over to the king. As though it were not enough to shut him up, bound as he is with chains, in a prison, you place upon him a most weighty burden, under which he cannot survive.

Buchanan: We are not contending for that, but for a thing which he could accomplish easily; we urge that he bind himself to hear petitions.

Maitland: What is meant by that?

Buchanan: That the king should at all times conduct himself toward his people—whom he should regard as his children—just as he thinks that fathers should conduct themselves toward their children.

Maitland: What has this to do with the matter?

Buchanan: This, surely, is the one sovereign remedy against evil practices. And lest you think this my own invention, hear Claudian;

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[35]Terence, *Eun.* 353.

Is it not of the utmost importance, then, that princes guard their conduct carefully, in all respects, since neither their faults nor their good qualities can be hidden, and since there is no limit to the influence they may exert on human affairs?

If anyone has any doubts respecting the importance of the conduct of a prince, let him consider the beginnings of ancient Rome, what hatred and fear did they arouse—those rough folk banded together, drawn from among shepherds and refugees, I will not say from worse, having gotten an exceedingly warlike king, and like an armed camp, demanded tranquility of their neighbors or provoked them to fight? That same people, when they had appointed a good and just king, were suddenly transformed, and devoted themselves to religion and justice to such an extent that their neighbors deemed it almost a crime to harm them—those very neighbors, I add, whose fields the Romans had laid waste, whose cities they had burned, and whose children and kinsmen they had enslaved. Now if in a society so barbarous and in an age so uncultured, Numa Pompilius[38]—come only a short time earlier from a hostile people—could accomplish so much, what should we expect of those princes who come to their imperial dignity with the support of kinsmen, vassals and inherited wealth, who are born and educated in the expectation of power? How greatly this should inspire the minds of princes to excellence, that they may aspire, not to glory for a day, as do the actors who have given a good performance of a play, but the affection and admiration of their people during their lives, and perpetual renown in succeeding ages. They know, too, that a heavenly reward is prepared for then in the life to come.

I wish that I were able to express in words as adequately as I conceive it the nature of that honor. But that I may partially present the idea in rough outline, consider the brazen serpent which Moses set up in the desert of Arabia—that, by one look at it, the wounds made by other serpents were cured.[39] Think that out of the great crowd, some bitten by the serpents were running to the healer set up before them; others were amazed at the wonder of a new thing. All were celebrating the great

[38]Livy, I. xxviii–xxxii.
[39]Numbers. xxi. 9.

love his people have for him and not by their fear of his soldiers. He is not merely set free and raised to great dignity—he is also honored, venerated, sacred, and glorified. The moment he appears in public, he is greeted with the utmost good feeling by the most favorable expressions; and wherever he goes, all faces, eyes, and thoughts are upon him. What ovation or what triumphal procession can compare with this paying homage every day. Or, if God, in human form, should descend to earth, what greater honor could he receive from men than that which is shown to a true king, who is the living representative of God? Nor can love bestow, nor fear extort, nor flattery invent an honor greater than this.

What think you of this conception of a king?

Maitland: Truly splendid! So magnificent indeed that it appears to me that nothing more magnificent could be described or conceived. But, in the corruption of our times it is difficult for such greatness of mind to emerge, unless care in education is added to solid natural ability and good native disposition. For the mind being shaped from childhood by sound instruction and exercise, and being strengthened by age and by experience in practical affairs, strives, by worth, to win true glory—the pleasures of the flesh tempt it in vain, and in vain is it shaken by reverses of fortune. For, thus

> Instruction doth perfect the inborn traits, and education strengthens principles.[41]

As a consequence, the properly developed character finds opportunity to exercise its strength even among the allurements of pleasure; and strength finds, in the difficulties which commonly terrify the weak, opportunity for glorious action.

And so, since liberal culture is of so much importance, the matter of impressing right principles on the tender mind of a king from the earliest days of his life should be looked after with the utmost care and attention. For, since there are many benefits which citizens enjoy from good kings, and, on the other hand, so many calamities proceed from bad leaders, that nothing appears to me to have more value for every group of a nation than the scholarly and moral character of the kings

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[41]Horace, *Carmina.* IV. iv. 33–34.

Great Father of the Gods, we beseech you,
Punish cruel tyrants, thus:
When lust, abominable,
Filled with burning poison, shakes their being,
May they see goodness, and may they die
Of longing for what they have deserted.[43]

And now, that we have come to speak of tyrants, if you will, should we not continue this line of thought.

Maitland: Yes, unless you know of something that should come first.

[Chapter Twenty-seven. It is of the Nature of Tyrants That They Seize Office Without Being Legally Chosen, and Rule Autocratically. Such Rulers Are to be Counted as Tyrants, Even Though They Do Many Things Which Benefit Their Subjects.]

Buchanan: We shall not, I think, go astray, if we pursue the same paths in seeking to learn about tyrants which we took in our investigation of kings.

Maitland: I quite agree. For by this course we shall readily perceive the difference between them as we compare them with each other.

Buchanan: And first, beginning with the word *tyrant*—I do not certainly know to what language it belongs. I think it is useless for us to seek its Greek or Latin root. Now I think that all of us who are familiar with humane letters understand quite well what the ancients called tyranny. For those were called tyrants by both the Greeks and Latins who had autocratic power in their hands—power neither circumscribed by any bonds of the laws nor subject to judicial investigation. Consequently, in both languages, as you know, not only heroes and most eminent men, but also the greatest of the Gods, even Zeus himself, are called tyrants; and this was done by persons who both think and speak of the Gods with reverence.

Maitland: I am not ignorant of that; but I am the more puzzled that this name should now be regarded throughout the whole world as hateful and a term of the most severe reproach.

[43]Persius, *Sat.* iii. 35–38.

illustrious: As, among the Romans, Camillus, Metellus, and Scrofa; and among the Germans, Henry, Genseric, and Charles. You may understand this the better if, leaving the name out of account, you consider that this type of government has continued in its early distinction among many glorious nations. For example, the Aesymnetae among the Greeks,[43a] and the dictators among the Romans. For rulers of both of these types were legitimate tyrants. Now they were truly tyrants, for they were more powerful than the laws; but they were legitimate tyrants, because they were chosen by popular election.

Maitland: What is this I hear? They are tyrants and actually legitimate? I certainly expected something far different from you. Now you seem to completely obscure the distinction between kings and tyrants.

Buchanan: Among the ancients, kings and tyrants seem to have been much the same; but their functions changed, I imagine, from time to time. For I think the name tyrant the older; later, when this name became distasteful, the name of king took its place—a name more suave and denoting a milder government. When the government had degenerated, the laws, which set limits to the boundless avarice of kings, were relaxed. The established form of government became distasteful to men who longed for new remedies, and a revolution was effected; the character of which was determined by the spirit of the times and by the culture of the people. It is proposed to define both of these types of government in this discussion. First, the type of government in which the laws are superior to the rulers; and then the worst sort of tyranny, the opposite in every respect of a royal government. We will undertake to compare them.

Maitland: I agree, and am eager to have you go on.

Buchanan: At the outset it was understood that political authority was established for the purpose of safeguarding civilized society. We determined the king's true function in

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[43a] *Aesymnetes* (αἰσυμνήτης) according to Anton's *English Lexicon of the Greek Tongue*, this title was applied in antiquity, to an umpire chosen to regulate the games; to an elective ruler; and, by Dion. Hal., V, to an officer, similar to a Roman dictator, who was, for a time, invested with supreme power. Aristotle, *Politics*, III. x. 10.

away a part of their ill-gotten gains, to win reputations for justice by means of unlawful conduct and of generosity by robbery with arms. Now, by one hideous crime they throw away all the regard purchased by their show of goodness, and so they actually diminish the confidence of their subjects in them; because they act not out of regard for the public good but in order to enhance their own power; and in order that they may enjoy their own pleasures safely, and secure their authority for the future by decreasing a little the hatred of the people for them. When they have accomplished this, they return to their old ways. For the harvest of the future may readily be foreseen from what is sown. The ruler who has power to evoke all laws or to transfer their authority to himself at his pleasure has also power to destroy all laws. But it may be best to endure a tyranny of this sort [*i.e.*, benevolent despotism] if it is not possible to get rid of it without a public calamity; just as we prefer to endure some diseases of the body in preference to putting our lives in jeopardy on the chance of a doubtful cure.

But those who openly rule for their own selfish advantage and not for that of their country, and who do not consider the public interest, but only their own pleasures, who depend upon the weakness of the people for the security of their authority and who regard the kingly office not as a trust committed by God, but rather as booty turned over to them, are not united with the rest of us by any bond of common citizenhsip or of humanity; but ought rather to be counted the most dangerous enemies of God and of all mankind. For every action of a king should be directed toward the public welfare, and not at his own aggrandizement. Just to the degree that kings are raised to the greatest distinction among men, to that degree they ought to imitate the heavenly bodies, which, without being appeased by any services of ours to them, flood humanity with the life and blessing of heat and light. The titles with which we have honored kings should suggest this obligation to them.

Maitland: I seem to recall—they should employ a fatherly tenderness toward their subjects, who are committed to them as their children; and should be diligent, as shepherds, in

Maitland: Those indeed within which you seemed in your earlier remarks to have confined it, namely within the walls of the laws. I observe that those who go outside the laws—as robbers, thieves, and adulterers—are punished; and I regard this as a just ground of their punishment, that they have placed themselves beyond the bounds of civilized society.

Buchanan: What of those who desire never to go within these walls?

Maitland: They should be regarded as enemies of God and of men; I think they should be regarded as wolves or other predatory animals rather than as men. Monsters of such a sort that to nourish them is to nourish one's own destruction; so that the man who kills them benefits not only himself but also the whole community. If it were within my power to make a law, I would order (as the Romans commonly did with respect to monsters) that men of this sort should be taken to uninhabited regions of the earth, or sunk into the depths of the sea far out of sight of land, lest the infection of their dead bodies be hurtful to men; and that rewards should be decreed to their slayers not only by the state but also by private individuals; as was usually done in former times for those who killed wolves or bears or caught their young. Nor would I, should a monster of this sort be born and should it emit a human voice and have the face of a man and resemble it in respect to the other members, trust myself in its society. Or, if any person divested of his human character should degenerate into such a monster that he could not meet other men except to their hurt, I think that he should no more be called a man than should satyrs, apes, or bears, though he should counterfeit humanity in features, carriage and speech.

[Chapter Thirty-one. The Tyrant, Because He is the Enemy of the Human Race, Has Made Every Man His Enemy, and, as a Consequence Suffers in His Own Person Torments as Fearful as Those He Inflicts on Others.]

Buchanan: Now, unless I am mistaken, you understand what the wisest of the ancients considered the nature of a king,

wife;[46] and Sp. Cassius was put to death by his own father.[47] What torments do you suppose the man who has these pictures always before his eyes must carry about in his breast? He must think of himself as the target set up to be shot at by the entire human race. Not only does he suffer from the torments of conscience while he is awake, but he is aroused out of his sleep by terrifying visions of both the living and the dead, and is harassed by the faces of the furies. That time which nature has provided as a season of rest for all living things and for men as a period of relaxation from his cares has been turned for tyrants into a time of horror and of punishment.

[Chapter Thirty-two. Maitland Contends that Buchanan's Arguments are Beside the Point, for What is Said Applies to Elected Rulers, Not to Those Who Rule by Virtue of Royal Descent. They Should Have Been Presented to Our Ancestors Who Have Committed Perpetual Sovereignty over the Scots to the Royal House of Scotland.]

Maitland: I cannot pass on the accuracy of your arguments, though they are certainly quite skillfully put. But they appear

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the state, put a number of citizens to death without trials. He was assassinated by his own kinsmen and friends—according to Diodorus, xvi. 65, 4, by the hand of his own brother Timoleon. Plutarch, *Timoleon*, iv. 4, says that Timoleon, taking with him Aeschylus, brother of the wife of Timophanes, and Satyrus remonstrated with the tyrant upon the course he was following. When Timophanes became angry and violent, Timoleon went aside a little and muffled his head with his cloak, while Satyrus and Aeschylus drew their swords and killed the tyrant. Nepos, *Timoleon*. i. 4, supports the account given by Plutarch.

[46]Alexander, about 369 B.C., made himself master of Pherae, in Thessaly. According to Plutarch, his cruelties and debaucheries aroused such hatred of him in his wife, Thebe, that she conspired with her brothers to murder her husband. Thebe carpeted the stairs leading to her husband's bedroom with wool, in order to deaden the sound of the steps of her brothers, had the dog who guarded her husband at night sent away, and admitted her brothers to the room, where they killed her husband. The story, as told in Plutarch, *Pelop.* xxviii, 4, 5, and xxxv. 3–7, is thought to have furnished something of the inspiration for the plot of *Hamlet*.

[47]Spurius Cassius, three times (502, 493, and 486 B.C.) Roman consul, is said to have proposed a number of agrarian reforms, the purpose of which was the distribution of public lands to the plebeians. Failing to secure the assent of the Roman senate to his proposals, he attempted to effect the measures by force. He was tried before the senate on the charge of attempting to make himself king, found guilty and put to death. The

utterly stupid as to willingly permit such a law as this to be imposed upon them; or if ever there were a people so unintelligent, they certainly deserved to be eternally ruled by tyrants as a punishment for their stupidity. If there ever was such a law, let us regard it as a warning to us to beware, not as a model for imitation.

Maitland: You assuredly teach excellently; and your instruction is applicable to those who had it in their power to make persons of this sort their kings. It certainly does not apply to us, who do not elect the best men by our votes, but accept those given us by chance. Furthermore, the opinion of the legal expert seems to be aimed at us, who have committed to the ancestors of our kings this power with respect to us and to our posterity, that they should have perpetual sovereignty over us and our posterity.

I wish that you had instructed them—I mean our ancestors, with whom the matter was still undetermined, who accepted as their kings whomsoever they wished. This belated advice of yours avails now only for this: With no power at our disposal to correct these matters, we may bewail the stupidity of our ancestors and think about our own miserable condition. For what can remain to us, who have been delivered into slavery, but that we pay the price of other men's folly? But in order that the payment may be the lighter, let us alleviate it by patient endurance. Ought we to provoke the anger of rulers by constant outbreaks—rulers whose authority we cannot throw off, whose power we cannot diminish, and whose strength or weakness we cannot escape?

But that law of kings, to which you are so hostile, was not made for the benefit of tyrants, as you would have it. It was, in fact, sanctioned by Justinian, a most upright prince, by whom such open flattery would not be countenanced. On the other hand this sentiment applies to a foolish prince:

> Who, except the libertine and liar, is happy over empty honors or terrified by lying scandal?[50]

Buchanan: Justinian was indeed, as history has long told us, a great man; though some historians do charge him with

[50]Horace, *Ep.* I. xvi. 38–39.

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be too tedious to enumerate each individual case, I shall present a few of the latest instances only, the memory of which is fresh. The nobles punished the murder of James the First[53] —who left as his heir a son six years of age—with the utmost severity, putting to death, by new and ingenious tortures, men of the most illustrious families, rich and of the highest standing in society. On the other hand, who grieved over—I do not ask who avenged—the death of that particularly cruel and infamous man, James the Third?[54] When, however, his son, James the Fourth,[55] was murdered, to fall under suspicion of the crime was to incur the death penalty.

Nor were our ancestors loyal to good kings only, for they were also patient and forgiving toward the bad. For when Cullen[56]—who was on his way to defend himself at his trial when one of his enemies killed him on the journey—was slain, most severe penalties were imposed by a sentence of the Estates of the Realm. Similarly when an enemy killed Evenus [III], who had been condemned to life imprisonment, in his dungeon, he was punished in the same way. The slayer was prosecuted for having violently done to death that parricide, whose wicked life had been hateful to everyone.

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[53]James I of Scotland (1394–1437) was, at the instigation of Walter Stewart, Earl of Atholl, murdered by Sir Robert Graham. Both Atholl and Graham were executed, after having been put to torture. Buchanan tells the story in Book X of his *History of Scotland.*

[54]James III of Scotland (1451–1488) was assassinated, shortly after his forces had been defeated at Sauchieburn, near Bannockburn, by a rebel force led by Scottish nobles. Buchanan says in Book XII, lx–lxii, of his *History of Scotland* that the estates "voted that he was justly slain, and an act passed to prevent all who had ever borne arms against him from being ever, personally or in their posterity, disturbed on that account."

[55]James IV of Scotland fell at the battle of Flodden; but the story was told that he had not been killed in battle, but had fled from the field, only to be murdered a little later, near Kelso, by vassals of Hume. Buchanan notes this report in Book XIII of his *History of Scotland,* but concludes his account of the matter by saying, "these reports were in general so doubtful, that upon Hume's trial before James, earl of Moray . . . , they were never brought against him."

[56]Cullen and Evenus III are listed by Buchanan as early Scottish kings. James Aikman, translator of Buchanan's *History of Scotland,* while expressing complete confidence in Buchanan's integrity as a historian admits that a "great deal of doubt as well as obscurity hangs over the whole history [of Scotland] till the junction of the Picts and Scots." He points out that Buchanan's list of Scottish kings before Kenneth Macalpin corresponds with the list of no other writer. "The Life of George Buchanan," prefaced to Aikman's translation of Buchanan's *The History of Scotland* (Glasgow and Edinburgh, 1827), pp. lxxiv, lxxv.

tion than a whole people? For the injury done to the public does not affect some particular part of the citizenship, but reaches widely into every part of the body-politic.

Maitland: I am aware that in cases involving private persons there is this law respecting usurpation of rights, nor is there anything wrong in it. But this is not the matter we are debating so earnestly, seeing that the account of the matter which historians give us of it is far more probable, namely, that the people have voluntarily surrendered their rights to the king.

Buchanan: It is also most probable that an arrangement of so great importance was not affected except for a very important consideration.

Maitland: I readily agree.

Buchanan: What do you think was the chief consideration?

Maitland: What else other than what is told us: disgust with ambition, disorder, murders, and civil war? And often these civil wars resulted in the utter ruin of both parties to the conflict and always with great harm to both; for those who had seized political authority, in order that they might bequeath it without further strife to their children, would attempt to wipe out their brothers and other near kin. This we hear is the practice among the Turks; and we see it among the clans in our own islands, and in Ireland.

Buchanan: To which do you think such a contest the more hurtful, to the people or to princes?

Maitland: To the kings, certainly; for the greater part of the people—themselves personally safe—are accustomed to watch the contests of princes, and always render homage to the victors.

Buchanan: It appears from this that princes wish to settle the succession in their own families rather for their own sake than from any advantage that this would have for their people.

Maitland: That is probable.

especially to those who wish to look forward to a future for their own families.

Maitland: Why should we regard a future of this sort [*i.e.*, of enjoyment of unlimited authority] as without advantage?

Buchanan: Because nothing contributes so much to the continuance of governments as limitation upon the exercise of authority, for this is both honorable to kings and a safeguard to the people and to the public safety. The human mind has something sublime and eminent implanted in it by nature; it will submit to no man unless there be something of worth to be gained by accepting his authority. Nor is there anything that is more potent for the maintenance of human society than the reciprocal exchange of favors. And by this fact, Theopompus is shown to have answered wisely his wife's complaint to the effect that, by the addition of the Ephors, the force of his authority had been reduced, and that the royal power which he would bequeath to his sons would be less than that he had received. He answered: "By so much, the more secure."[58]

Maitland: I see that what you have to say of securing tenure in office is most true. For I believe that the Scottish and the Danish kingdoms are by far the most ancient of Europe, nor do they seem to me to have sought to secure themselves by any means at all other than the most complete regularity of government. In the meantime the kingdoms of the French, the English, and the Spaniards have passed frequently from one family to another. But I do not know if our kings have been so wise as was Theopompus.

Buchanan: Although they may not have exercised a great deal of foresight, do you think that the people would have been so stupid as to miss so good an opportunity if it were thrust upon them? That they were so overcome with fear or misled by flattery that they would voluntarily give themselves over into slavery?

Maitland: Perhaps not; but, as might very well have been the case, they may have been so blind as not to understand what was involved in the matter; or seeing, were so careless

[58]Plutarch, *Lycurgus*, vii.

Buchanan: Our kings, when they are publicly consecrated, promise the entire people, with an oath, that they will preserve the laws and usages of their ancestors and our ancient institutions, and will use the same system of justice which they have received from their ancestors. The entire ceremonial and the first entry of a king into every city reflect it. From all of these instances it is easy to understand what sort of authority they have received from their ancestors; namely, that it is just this: Those who are elected by the suffrages of the people swear obedience to the laws. God gave this principle as the correct one for a kingdom to David and to his posterity; and promised that they would continue to reign just so long as they obeyed the laws which He had given them.[61]

It is most probable then that this was actually what took place: Our kings received from our ancestors an authority which was not absolute, but which was limited within definite bounds. Confirmation, moreover, is supplied by immemorial usage and by the people's assumption, without objection being made, of certain rights—for no one has challeneged this assumption by a public pronouncement.

Maitland: But I fear that it is not going to be easy to induce kings, however they may have sworn obedience to the laws or the people may have assumed power, to yield this obedience.

Buchanan: I, for my part, believe that we should encounter no less difficulty in persuading the people to give up a right received from their ancestors, approved by the usage of centuries, and held in uninterrupted possession.

Nor do I think it necessary to guess what may be done, since I see what has been done. Even though, through the unreasonable stubbornness of both sides, the matter should lead to civil war, the victor will impose on the vanquished such law as he pleases; but he will impose it only until he who was the weaker in the struggle—his forces having been collected again—takes up arms once more. In such contests the fighting is always extremely damaging to the people but almost utterly destructive of kings. From this one source comes the ruin of all kingdoms.

Mailand: This is inevitable.

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[61] I Kings ii. 4.

anything was approved heedlessly, there may be opportunity for correcting what is amiss.

Maitland: I agree.

Buchanan: First of all, it is understood that among the Scots the king is made for the sake of the people; and as there is no gift of God better than a good king, so is there no worse plague than a bad one.

Maitland: Right.

Buchanan: We have said, moreover, that a bad king is called a tyrant.

Maitland: So we have.

Buchanan: There is, moreover, no such abundance of good men that there are excellent ones always at hand we may elect; nor is there such happy chance of birth that luck will always furnish us the good ones. We may not, therefore, have as kings such men as we would wish; yet we may have such as the general will has approved, or as chance affords. But this hazard with respect to the election of new kings, or in accepting those given us by their descent, is the reason for our desiring laws to control the power of kings. But these laws should differ in no respect, in so far as we can attain it, from the pattern of a good prince.

Maitland: We are in agreement here, too.

[Chapter Thirty-eight. The Friends Discuss the Matter of the Punishment of Tyrants. Maitland Recalls the Biblical Command that Christians Pray for Rulers. How Then, He Asks, Can it be Right to Hold Them to Account for Their Acts?]

Buchanan: It now remains, I think, for us to discuss the punishment of tyrants.

Maitland: That alone seems to be left.

Buchanan: If, therefore, the king breaks all the bonds of the laws, and clearly conducts himself as a public enemy, what do you think should be done with him?

as the phrase has it, than the light, I need not delay longer in order to prove or to elucidate anything so evident.

Now as to the point from the Book of Kings which you rather indicate than state, I beg of you to beware lest you think that God allows to kings those things which He abhors in the lives of tyrants. He did not do this in the instance to which you refer. I bid you first think what the people asked of God, next what reasons they had for this novel request, and finally what answer God made to the people.[62] First, they asked for a ruler. And of what sort? A legitimate one? But such a one they had, for God, whose prerogative it was to set a ruler over them, had given Samuel to them. Samuel had judged them lawfully, according to the principles of the divine laws. But when, in his old age, his sons judged in his stead, they did many things that were wrong and delivered judgments contrary to the laws. Now I can see no reason why the people should have asked for a change in the form of government, in preference to asking that the faults of the one they had should be corrected; or why they hoped so confidently that God would grant this, since, because of similar provocation, he had almost completely wiped out the family of Eli. What, then, did they ask for? They asked for a king, such as the neighboring nations had, who would be a judge at home and a military commander against outside foes. But these kings were, in effect tyrants. For since the peoples of Asia are of a more servile disposition than Europeans, they are more ready to obey tyrants; nor has there ever, so far as I know, been any mention by any historian of any constitutional monarchy in Asia. That a tyrant, not a king, is here described is very readily apparent from the fact that the covenant earlier prescribed to them in Deuteronomy is not merely different from, but is actually the opposite of that cited here. Under this covenant Samuel and other judges had ruled for many years. God declared that when Israel rejected this covenant, they rejected Him.[63]

Maitland: But God, on all occasions, called him a king, and not a tyrant.

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[62] I Samuel viii–x.
[63] I Samuel viii. 7.

it: It is not only the safety of kings, but the peace of the Church—from which it is not difficult to conceive the form of the prayer.

In the Epistle to the Romans, he defines a ruler with a precision almost equal to that of formal logic.[65] For, he says, the ruler is a minister to whom God has entrusted the sword, that he may punish evil-doers, and assist and support the good. For as Chrysostom says: "Paul was not writing of tyrants, but of true and lawfully appointed rulers, who are God's true vicegerents on earth: Anyone who resists them does indeed resist God's ordinances."[66]

But, on the other hand, although it is our duty to pray for bad princes, we ought not to conclude from this that their crimes ought not to be punished; they should no more be immune to punishment than are the robbers for whom we are commanded to pray. Nor does it follow from the fact that good rulers ought to be obeyed that the bad ones ought not to be resisted. When you study the condition which impelled Paul to write, take care that this passage is not misunderstood. For he was writing for the purpose of rebuking a particular erroneous attitude on the part of some persons who denied that governmental authority extended to Christians. They [the Antinomians] maintained that, inasmuch as government should be provided as an agent for holding evil-doers in check in order that we may all live under impartial justice and that an example of divine justice should continue among men, political authority is of no value for those persons who are unaffected by the vices, for they are a law unto themselves. Paul, in consequence, is not pleading for those persons who exercise political authority, but for political authority itself; that is, for the functions and duties of those who rule over others. Nor is he pleading for any particular type of government, but for every lawful type of government. He is not, moreover, disputing with those who believe that bad rulers ought to be controlled, but with those persons who refuse to accept the authority of all magistrates; and who, putting an absurd inter-

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[65]Romans xiii. 1–7.

[66]Romans, *Homily* xxiii, is in the spirit of this passage, but I have not succeeded in locating this quotation.

But should anyone argue that bad princes are likewise appointed by God, beware of the fallacy of this argument. For God, as the proverb has it, uses a hard wedge for a hard knot, and sets up a bad man for a while as a punishment to the wicked;[67] but no man of sound mind would dare to affirm that God is the author of human wickedness; and, likewise, no one is ignorant that he is the author of condemnation of sin. A good ruler, moreover, usually chooses a bad man [to act] as the executioner who punishes criminals; but though the ruler chooses the executioner for this service, he does not grant to him perpetual immunity from punishment for all crimes. Nor will the ruler wish to be above the laws; so that he cannot be held to account under them.

But I will not delay longer on this comparison, lest the court flatterers raise an outcry that I speak with too little respect for the highest officials. But however they may cry out against me, they surely cannot deny that the duty performed by the executioner is a part of the public service, and possibly of the royal office. Assuredly this is the testimony of the kings themselves, who when any one of their public officials is wronged, charge that their majesty and person are wronged.

The punishment of criminals, moreover, and other matters of this sort, lie within the duty of a king. What have you to say respecting the governors of cities? Of the commanding officers of camps? What of governors of provinces? What of the consuls themselves? Does Paul not command us to be subject to them? Does he regard them as private persons? It was customary not only to put minor officials, who were guilty of maladministration, out of office, but even those who were equal to kings. I wish, then, that those who idly imagine that by his words Paul has given such a great power to kings might show, from this same Paul, that kings alone are to be included under this name of authorities, and therefore that they alone are to be exempted from punishment; or whether, when we speak of authorities, we mean also those other officials, set up by the same authority of God for the same employment. I wish moreover that they would show me also whether all

[67]Calvin, *Institutes.* xvi C.

feature there is in this case which accounts for your proposal that it be universally imitated; and if you cannot do this, it must be confessed that whatever is commanded to any individual by any specific divine command is equally binding on all. If you once admit this—which you must do—it would be at once pointed out that the slaying of Ahab was done by God's command; and that a reward was promised and paid to the killer, also by divine command. And so, should you appeal to the argument that all tyrants must be obeyed because God, through his prophet, in one instance ordered his people to obey a tyrant, you will immediately be told in reply that all tyrants should be put to death, because Ahab, at God's command, was destroyed by one of the officers of his own army.[69]

I advise you, therefore, to prepare some stronger defense of tyrants out of the Scriptures; or else to lay this defense aside for the present, and once more go to school to the philosophers.

Maitland: I will consider it. But in the interval, let us return to the matter from which we have wandered. What proof do you present from the Scriptures in support of the contention that tyrants may be killed without guilt to the slayer?

Buchanan: First, I suggest this, that it is expressly ordered that wickedness and wicked men are to be put out of the way, without any exception of rank or estate; at no place in the sacred pages, moreover, is there any indication that tyrants are to be treated with more circumspection than private persons. Next, the description of public officers which Paul gives does not apply to tyrants in every respect, since, indeed, they employ the power of government, not for the profit of the people, but for the gratification of their own desires. Furthermore, the extent of the powers which Paul attributes to bishops should be earnestly considered. He dignifies their office with exceedingly high and genuine encomiums; to the effect that they

[69] I Kings xviii–xxii, and II Kings ix. 1–37. See especially xxii. 6–38. Jehu was anointed king of Israel by one of the younger prophets, at the direction of Elisha, an unrelenting foe of Ahab and of his wife Jezebel. Jehu and his brother officers conspired against Ahab, who did not, however, fall at their hand but at the hand of an enemy who, in battle, "drew his bow at a venture." Jehoram, son of Ahab, succeeded his father as King of Israel. Jehu killed Jehoram with his own hand, and had all the other sons of Ahab, his kinsfolk and friends put to death.

But, to leave ancient history, the memory of Paul the Fourth[70] remains fresh. His own Rome demonstrated the general detestation in which he was held, by an act of the sort just spoken of. For the Roman people vented their rage upon his relatives, his statues, and his portraits.

You should not regard this line of reasoning, by which we separate an office from him who holds it, as more devious than philosophy can allow or ancient commentators approve; for the masses, untaught in other nice distinctions of logic, are not ignorant of it. The craftsmen of a particular trade do not regard the punishment of a smith or a miller for robbery as a disgrace to their craft; but, instead, rejoice that their company is purged of criminals. If anyone feels differently in this matter, I am convinced that he must be regarded as sorrowing more because men are punished with whom he is associated in villainy than because of the disgrace brought upon the guild.

Were kings to rely on their own good sense and not on scoundrels and sycophants, and were they to measure their importance rather by the good of their services to the state than by the impunity with which they commit crimes, they would not be distressed by the punishment of tyrants, nor would they think that their order is in the least diminished in dignity by the destruction of such men. Instead, they would be glad that that order had been cleansed from the most shameful stigma of corruption; and especially so since, as is right, they are commonly most enraged against any robbers who pretend to act in the King's name.

[Chapter Forty. There is Abundant Proof that the King who is Being Tried for a Crime is on Trial with Respect to the Crime, and not as Respects His Kingship.]

Maitland: Tyranny is indeed detrimental to royal prestige; but I wish that, leaving the topic at this point, you would pursue the other subject of which you spoke.

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[70]Paul IV was elected in 1555 and died in 1559. A relentless foe of Protestantism, he led in its eradication in Italy, but the severity of the Inquisition under his reign caused him to be greatly hated; so that his death was followed by a rebellion in Rome.

civil authorities, servants their masters, and wives their husbands. Furthermore, they were not to think that the yoke of Christ, however light it may be, frees us from the bonds of our duties; but that we ought, more faithfully than before becoming Christians, to perform every duty of our respective stations, in order that we might, by honorable actions, win the favor of men. And once this state of affairs was established, because of the character of the Christians, the name of God was heard gladly by the people, and the glory of the Gospel was spread the more widely.

Princes and subordinate officials, though evil, were the keepers of the public peace, which was essential to the achieving of this condition of things. Let me give you a simple illustration. Imagine that some one of our scholars should write to Christians who are subjects of the Turkish government; and to men, I add, of limited means, of humble spirit, defenseless, few in number and exposed, from every quarter, to all sorts of ill usage. How, I ask, could this hypothetical scholar advise them differently from the advice which Paul gave to the church at Rome, or which Jeremiah gave to the Hebrew exiles living in Assyria?

Now the most convincing proof that Paul had in mind the situation of the persons to whom he was writing and of citizens generally is this: He is extremely careful to explain the reciprocal character of the duties of husbands toward their wives and of wives toward their husbands, of parents to children and of children to parents, of servants to their masters and of masters to their servants; but when, at length, he wrote of the duties pertaining to public office, he does not call them by name—as he had in the relations mentioned before. On this account, we believe that these are the only directions which he gave to kings and subordinate authorities; especially since the inclinations of rulers are to be restrained by more fetters of the laws than are those of private persons. What other reason can we assign for his actions than that there were in the Church at that time no kings nor subordinate authorities to whom he could write?

But let us suppose that Paul were alive in these times, when not only the people but even the princes profess Christianity.

regarded as infamous and criminal. I am able to cite, from the codes of many a nation, a great number of most beneficial laws to which there is no parallel in the Holy Bible. For the general agreement of all people approves the principle that what the law commands is right and what it forbids is to be regarded as wrong; likewise there is never, in the memory of man, any prohibition to the effect that what the law does not contain is never to be done under any circumstances. For such slavery has never been agreed to, nor will the natural order, so fruitful of new expedients, allow it to be agreed that whatsoever is not ordered by some law or reported in some famous example must be regarded as infamous and criminal.

And so if anyone demands that I cite a precedent from the Holy Bible where the punishment of evil rulers is approved, I shall ask of him in turn, where such a course is censured. For, if no course of action is permissible save that for which there is a precedent, what part of our governmental institutions would remain to us? What part of the laws? For the greater part of them is not taken from some ancient precedent, but is established without a precedent as a sanction against some new form of rascality. But we have made a more extensive reply than was necessary to the demand for precedents. The fact that the kings of the Jews were not punished by their citizens does not bear greatly on the question of our institutions. For the Hebrew rulers were not made kings by the act of their people, but God himself set them over the nation.[72] And so by the highest law, He who was the author of their rank also inflicted punishment.

Now we maintain that the people, from whom our kings hold the powers to which they lay legal claim, have an authority above that of kings; and that the people of the nation have the same authority with respect to the rulers that rulers have with respect to one person from among the citizens.

All the institutions of other peoples who live under a government of laws[73] support our system of the powers of government. All peoples which give allegiance to rulers whom they have chosen hold this common conviction, that the people may, for

[72] I Sam. ix. 16–27; x. 1–27.
[73] Plato, *Laws*. iv. 715 D.

outmoded matters, if I should mention Cullen, Evenus and Ferchard, I shall recall a few matters within the memory of our fathers. All the Estates *[Ordines]* of Scotland, in public assembly, gave judgment that James the Third[76] was lawfully put to death, for his extreme cruelty toward his people and his shameful wickedness. And they made sure that none of the persons who banded together, plotted, and contributed money or effort in connection with the slaying should suffer because of it. They judged this act, then, to have been right, and done with due regard to legal form; nor is there any doubt but that they wished to set a precedent for posterity.

This is no less a precedent than is the decision in which L. Quintius officially commended Servilius Ahala—who turned his back on the court and refused to answer at his trial for having killed Sp. Maelius in the Forum—and declared that he was not guilty of the murder of a citizen, but that he was ennobled by reason of his slaying the tyrant; and succeeding generations have, each in its turn, agreed with this decision.[77] Seeing that the citizen affected approved of the slaying of a tyrant, what do you think he would have done to the tyrant who robbed his subjects of their goods and shed their blood? What have our fellow Scots done? Do not those who have bestowed upon the perpetrator of an act of violence a public decree of immunity appear by this course to have established a law for every case of this sort which shall occur in the future? For, in short, there is no difference between a legal decision touching some matter that has been done and a statute looking to future contingencies; for a judgment is passed respecting the character of an act and respecting the punishment or reward of its author.

Maitland: Perhaps these considerations may carry some weight among us Scots; but I do not know how foreign nations are going to receive them. You understand that I must put their minds at rest. Not by way of defense against an accusa-

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[76]Buchanan tells the story in his *History of Scotland*, Book XII. P. Hume Brown (*History of Scotland*, I, 287) tells the story of the rebellion against James and of his murder, but says nothing of these other matters.

[77]C. Servilius Ahala, killed Sp. Maelius, who, it was claimed, aspired to abolute power, and was commended by the dictator. Livy. iv. 13, 14, 15.

will be needed to prove that absolute government would not be to the advantage of the public. For just as the people would not be willing for a physician to be permitted to put to death with impunity anyone he wished, so it is not to the public good to grant license to kings to attack everyone promiscuously. We must not therefore be angry with the people, whose greatest power is with respect to the making of the laws, if, just as they wish their king to be a good one, they should also wish the law to be superior to a king who falls short of perfection.

But if this law is not to the advantage of the king, let us see what should be done with the people, to induce them to give up some part of their rights, and that they may suspend the law not for three days, but for forty days; so that, according to our custom, we may call an assembly. But now, that we may discuss the matter, tell me, does he who frees an insane person from his chains seem to you to do anything to relieve his madness?

Maitland: Far from it.

Buchanan: What of someone who gives a cup of cold water to a man almost delirious with fever, who begs him earnestly? Do you think he deserves well of the sick man?

Maitland: But I speak of a king of sound mind; and I deny that there is real need of medicine for those in good health or that there is need of laws for a king of sound mind. You wish, indeed, that all kings may be thought bad; so you impose the laws upon all of them.

Buchanan: Not all, by any means; nor do I regard the whole people as bad, but nevertheless, the law speaks to all equally. The bad fear that voice—the good know that it does not affect them. In like manner, good kings do not suffer any indignity from this law; and the bad kings, if they were wise, would be grateful to the legislators who had established the law which made clear what would not me to their advantage and what would not be permitted. And they certainly would be grateful for the law, if ever they came to their senses; just as patients, once their illness is relieved, are grateful to the physician whom they hated while they were sick because he would not yield to their wishes.

toward any conclusion. For we agreed earlier that the voice of the king and the law should be the same; now we make him subject to the laws. If we should concede that this is true, how would this conclusion advance our thinking? For who shall bring a king who has become a tyrant to trial? I distrust the adequacy of the power of a law, not backed by force, to coerce a king forgetful of his duties, or to bring him to trial against his will.

Buchanan: I fear that you have not sufficiently considered what has been maintained above with respect to the king's authority. For, if you will consider you will readily understand that there is no conflict between the ideas which you have just spoken of. But, in order that you may understand it readily, first tell me this: When a magistrate or a clerk publishes a proclamation through a public crier, is not the voice of both the same? I mean of the crier and the scribe?

Maitland: The same, certainly.

Buchanan: Which do you think the more important?

Maitland: He who publishes the proclamation.

Buchanan: What of the king, the author of the edict?

Maitland: More important than either.

Buchanan: Then, following up this idea, let us compare the king, the law, and the people. The voice of the king and of the law are the same. Has either authority from the other—the king from the law or the law from the king?

Maitland: The king from the law.

Buchanan: On what grounds have you come to this conclusion?

Maitland: On the grounds that the law was desired to keep the king within bounds, not the king the law. And it is by virtue of the law that he is a king; for without it he is a tyrant.

Buchanan: The law, then, is superior in authority to the king, and is a corrector and governor of his desires and actions.

Maitland: That is already agreed upon.

Buchanan: What of the horse? Why is he valued?

Maitland: For many reasons; and especially as a means of obtaining victory in war.

Buchanan: We regard victory, then, as of more importance than horses, arms, and other materials which are provided for use in war.

Maitland: Of much more, certainly.

Buchanan: What was the principal thing that a people had in view in creating a king?

Maitland: As I see it, the advantage of the whole people.

Buchanan: Now, if there were no uniting of men, would there be need of kings?

Maitland: Absolutely none.

Buchanan: A people, therefore, is superior to its king.

Maitland: Necessarily so.

Buchanan: If superior, then greater, also. The king, therefore, is judged by the people, for the lesser is judged by the greater.

Maitland: But when may we hope for that happy situation when a whole people agrees on what is right?

Buchanan: This, indeed, is scarcely to be expected, and is certainly not to be expected with any confidence; otherwise there would be no point in making laws or creating magistrates. For there is well-nigh no law which bears equally on everyone; and almost no man who is held in such popular favor that there is no one who is his enemy, no one who is envious of him, or no one who slanders him. What is sought is that the law shall be of advantage to the majority of the people, and that the majority have confidence in the person chosen. Then, since a majority of the people may decree a law or create a ruler, why should a lesser matter—*viz.*, that the public should hold the ruler accountable and should set judges over him—be forbidden? And, if the tribunes of the Roman people and the

judges would you order the king to present himself? Before those over whom he has the supreme authority—men whom he can fetter by the single word, "I forbid!"

Buchanan: What if some greater authority is devised, which, in matters of judging, would stand in the same relation to kings as kings stand to others?

Maitland: I should like to learn what this authority is.

Buchanan: As you may recall, we have said that this authority resides in the people.

Maitland: In the whole people, or in the majority? For I grant you this, further, that this authority resides with those persons in whom the people, or the majority of the people, have vested it.

Buchanan: Well said! You save me a good deal of work by putting the matter so clearly.

[Chapter Forty-four. Maitland Expresses Lack of Confidence in the Character and Good Sense of the Common People. Buchanan Asserts Full Confidence in the Character and Intelligence of the People.]

Maitland: But you are not unaware of the fact that the masses for the most part are corrupted, either by fear or rewards or by the hope of a bribe or by privileges; so that they prefer their own comfort and pleasures to the public interest and even to integrity. Those who are not influenced by selfish considerations are not numerous. "Good people are rare. There are scarcely so many, as there are gates to Thebes; or separate mouths of the Nile."[81] For the rabble, nourished on blood and robbery, has its liberty for sale and envies the liberty of others. Now I pass over those to whom the name of an evil king is sacred. I do not depend, either, upon those who, though they are not ignorant of what is law and of what is right, choose a quiet inaction to honorable risks, and, with hesitant mind, order their plans with a view to any eventuality,

[81]Juvenal, xiii. 26–27.

[Chapter Forty-five. Buchanan Explores and Defends the Principle of the Independence of the Judiciary and of the Vital Importance of Judicial Review.]

Buchanan: If a private citizen maintains that his farm or some part of his land is illegally held by the king, what do you think that this private citizen should do? Should he give up the land, since no one can give judgment against the king?

Maitland: By no means; but he will summons the king's agent, rather than the king himself to appear in court.

Buchanan: Now see how valuable is the device of which you make use. For it makes no difference to me whether the king appears or his agent; for in either case, the risk is the king's. The outcome of the lawsuit will result in his loss or gain, not in the loss or gain of the agent. He whose affairs are under examinations is, in last analysis, the party to the suit. Now I wish you to consider how absurd and even wicked it would be to render a verdict against a king because of a little farm, or on account of lights in a house or of water falling from the eaves, if there should be no judicial notice taken of parricide, poisoning, or treason—how unreasonable to employ the utmost penalties of the law in lesser matters and to grant complete freedom and immunity in cases of the commission of the most atrocious crimes. Were this allowed the old saying would appear to be true: "The laws are very much like spiders' webs, which hold flies fast but let the bigger beasts pass through."[83] For is there justification for the complaints and indignation of those who say that it is neither honorable nor fair for a person of lower rank to hold a king to account. For they know that this is the accepted practice in lawsuits over land and money; and the men of the highest rank, second only to the king, commonly plead their case before judges who are not their peers in either riches, rank, or achievements—judges who are raised but a little above the masses, and are more the inferiors of the accused who stand before them than the nobles of the higher rank are to kings.

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[83]Plutarch, *Solon,* V; Diogenes Laertius, *Solon* 58; Valerius Maximus, vii, 2, 14. William Shenstone uses the proverb in his *Essay on Men and Manners: on Politics,* and Francis Bacon uses it in his *Apothegms.*

therefore, how kings who acknowledge that the majesty of Popes is so far above their own as to cast the shadow of its heavenly dignity upon all of them can think that it takes anything away from their dignity to be held responsible before the law, when the Pope does not think it unworthy of his office to descend from a more lofty throne in order that he might plead his case in the College of Cardinals.

Do you not see how false is the contention of those who think it is unworthy of them to be arraigned before judges of lower rank than themselves? For when a case is decided in court, it is not Titus, or Sempronius, or Stichus, but the law itself which condemns or declares innocent. Valentinian and Theodosius, most illustrious of emperors, regarded the subjection of kings to the law as especially honorable. I quote their very words at this point, because they are worthy of being remembered in all ages. They say:

> The declaration by which a prince declares himself bound by the laws adds luster to a king's majesty. It is the essence of government to subordinate the chief magistrate to the laws, and we will not permit any deviation from the principle which we now declare by the word of this edict.[86]

The greatest rulers both believed these things and acted upon them, as did also the worst princes. For Nero, performing in the character of a harper, is reported not only to have copied the postures and motions of the musicians, but when the time was come for judging their performances, to have stood anxiously, poised between fear and hope of victory. For though he knew that he would be adjudged the victor, yet he was aware that the victory would be more honorable if it were awarded not on account of the partiality of the judges, but on the outcome of a fair contest. Close observance of the rules did not, he thought, take anything from his authority, but rather made his victory the more glorious.[87]

Maitland: I now see that your statement to the effect that you desired that kings obey the laws is not so arrogant as I, at first, thought, for it rests not so much upon the authority of philosophers as of kings, emperors, and church councils. But

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[86] *Cod. Justiani.* I. xiv. 4.
[87] Suetonius, *Nero.* xxiii, xxiv.

Maitland: Very true.

Buchanan: When a king, therefore, is condemned by a judge, it is clear that he is condemned by the law.

Maitland: Clearly.

Buchanan: Since the voice of the law and of the king are the same, the king who is condemned by the law is self-condemned.

Maitland: It appears that he is no less self-condemned than if his sentence had been written by his own hand.

[Chapter Forty-six. Buchanan Develops the Principle of the Equality of Accused Persons Before a Court of Law.]

Buchanan: Why then do we put ourselves to so much trouble over the matter of the judge, since the sentence is that of the law—that is to say, of the king himself? Let us also consider a matter which has just occurred to me. Should not the king, when he is sitting in judgment in any case, lay aside all other characters—as brother, father, neighbor, friend, or enemy—and retain but the one character, that of judge?

Maitland: He should do just that.

Buchanan: And should he not think exclusively of what is a fitting course of action for that character?

Maitland: I wish that you would make this matter clearer.

Buchanan: Take this for example. If a man secretly takes away the property of another, what do we say that he has done?

Maitland: I should think that he had stolen them.

Buchanan: What name do we give a person who commits this act?

Maitland: Obviously, that of thief.

Buchanan: What of the man who lives with the wife of another as though she were his own?

Maitland: He commits adultery.

Buchanan: In a lawsuit then, the judge knows the defendant by but one name, that of the crime of which the plaintiff accuses him.

Maitland: By one only.

Buchanan: What if the king stands accused of parricide; what name is appropriate to that king at his trial?

Maitland: The name of parricide only, for he is not in court on any question respecting his government, but only as respects parricide.

Buchanan: What if two parricides be brought to trial, the one a king and the other a pauper. Will not the trial be the same for both?

Maitland: It will indeed be the same; Lucan, I think, speaks with no less truth than beauty in the lines:

> In the passing of the Rhine Caesar was both my leader and my comrade. Whom a crime makes guilty—it makes equal.[88]

Buchanan: True indeed. So it is not the king and the pauper who are on trial, but the parricides. But, if there should be any question as to which of two complainants should be king, or if there should arise a question as to whether Hiero be king or tyrant, or if there is any question which belongs particularly to the duties of a king, then the king is judged in terms of his kingship. Just as a painter would be judged in that character, were the question at issue his mastery of the art of painting.

[Chapter Forty-seven. Buchanan Argues the Right of a People to Overthrow Their Government and Stand upon their Freedom under the Law of Nature.]

Maitland: What of a case in which a king would not willingly submit to trial, and could not be compelled to do so?

Buchanan: Here he is in a common case with all criminals; for no robber or poisoner submits to trial of his own accord. But you know, I think, what the law provides—that anyone may slay a thief by night, and may slay him by day in self-

[88]Lucan, v. 289–290.

Buchanan: If a king were to do something the effect of which would be to destroy orderly government, for the preservation of which he was made a king, what would we call him?

Maitland: A tyrant of course.

Buchanan: But a tyrant has no rightful public authority; but is a public enemy.

Maitland: He is an enemy indeed.

Buchanan: And is it right to wage war against an enemy in case one suffers great and unendurable injury?

Maitland: It is absolutely right.

Buchanan: What of that war which is waged against a tyrant, the enemy of all humanity?

Maitland: It is the most just of all.

Buchanan: But once a just war is undertaken with an enemy, it is not only right for the whole people to destroy an enemy, but for the individual to do so.

Maitland: I grant that.

Buchanan: What of that public enemy the tyrant, with whom every good man is eternally at war? May not every member of the human race justly demand that all force of arms be employed against him?

[Chapter Forty-eight. "Rebellion to Tyrants Is Obedience to God."]

Maitland: I know that almost all nations share that opinion. For Thebe is generally praised for having killed her husband;[89] Timoleon for having killed his brother;[90] and Cassius for having killed his own son.[91] Fulvius killed his own son who had gone with Catiline;[92] and Brutus slew his own sons and kinsmen

[89]Plutarch, *Pelop.* xxviii. 4, 5; xxxv. 3–7.
[90]Diodorus, xvi. 65. 4.
[91]Dion. Hal. viii. 49, 69–79.
[92]A. Fulvius, son of a senator, joined the ranks of Catiline's army after hostilities had begun. He was put to death by order of his own father. Sallust, *The War Against Catiline,* xxxiv. 5.

the same deeds, and even more dreadful ones, when they are described in the history of ancient times. By this course they reveal that they are influenced more by regard to their own ignoble passions than by the public danger. But what surer evidence of what tyrants merit need we look for than that which is furnished by their own consciences. From thence comes their eternal fear of everyone, and especially of good men; for they see, forever suspended above their necks, the sword which they have drawn against their fellowmen; and by the hatred which they bear in their minds against others, they measure the hatred which others have for them. Good men, on the contrary, being suspicious of no one, frequently expose themselves to danger, since they estimate the goodness of others not in terms of the meanness of human nature but in terms of what they themselves deserve of others.

Buchanan: You think, then, that tyrants are to be regarded as the most savage of all monsters; and you think further that the harm done by tyranny is more contrary to nature than poverty, sickness, death and the other ills which can befall men in the course of nature.

[Chapter Forty-nine. Maitland Expresses Fear that this Principle may Open the Way to Civil Disorder. Buchanan Attempts to Show that it does not.]

Maitland: Indeed, when I weigh in my own mind the significance of your arguments, I cannot deny that they are true; but when I consider the dangers and troubles which are implicit in this theory, my mind, held in, as is a horse by a halter, somehow wavers, and turns from the too stoical and hard way toward expediency, and almost revolts. For if it is lawful for anyone to kill a tyrant, see what an opportunity for evil you provide to wicked men, and how great a hazard you create for good ones. You grant unbounded license to the wicked. You loose universal disorder upon us all! For could not he who kills a good king, or one who certainly is not of the worst sort, profess that his crime was committed with some regard to right? Or, if some good citizen should attempt in vain to kill a prince thoroughly deserving of punishment, or if he should

anyone were to rashly undertake the overthrow of a government, no more blame would attach to me for having defended the right of citizens to resist tyrants than there would attach to a physician who has diagnosed a disease adequately. The man who administers the remedy improperly is the person who should be held accountable.

[Chapter Fifty. The Church Censures Tyranny.]

Maitland: One thing more seems to be necessary to resolve our problem. If you can supply this, you will do me, I am sure, a great kindness. Tell me if the Church imposes any censure on tyrants.

Buchanan: You may, if you like, begin with the First Epistle of Paul to the Corinthians, where the Apostle forbids the having any fellowship, either by living or talking, with evil and dishonest men.[96] If this rule were observed among Christians, scoundrels, unless they mended their ways, would perish of hunger, cold, or exposure.

Maitland: That is certainly a severe censure, and I doubt if the people, accustomed as they are to yielding to their rulers in everything, will agree that kings ought to be included under this rule.

Buchanan: The Church Fathers certainly understood this passage from Paul's writings to teach that they should be so included. For Ambrose refused to admit the Emperor Theodosius to Christian fellowship, and Theodosius obeyed the bishop.[97] No action of which I have ever heard on the part of any other bishop of the early Church has received more praise;

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[96] I Cor. v. 10–11.

[97] *The Defiance of Theodosius by St. Ambrose.* During a riot at the circus at Thessalonica, Botheric, general of the imperial troops garrisoned at the city, and several of the magistrates were killed. Theodosius, who was, at the time, at Milan, sent orders that the city should be punished. On a day, therefore, when the people of Thessalonica were assembled in the circus by thousands, troops surrounded the place, closed the gates, and for three hours butchered the helpless spectators. Thousands were massacred. St. Ambrose, bishop of Milan, forbade Theodosius to set foot in a church building, and required of him full confession and penitence. The story is readily accessible in *The Dynasty of Theodosius* (Oxford University Press, 1889), pp. 131, 122. Ponet, in his *A Shorte Treatise of Politicke Power*, uses the inciendt in precisely the same way as does Buchanan.

Would it not be a wicked thing were we to wipe out or to neglect the laws which have proved so valuable through so many centuries? And is it not the height of insolence in those who are scarcely able to maintain their own government to attempt to weaken the stability and order of a foreign country? Are not our institutions advantageous not only to ourselves but to our neighbors also? For what can contribute so much to the maintenance of peace between neighboring nations as well ordered governments? For it is by reason of ungoverned and lawless passion that most wars of aggression are rashly undertaken, wickedly waged, and disgracefully concluded. Furthermore, what can be of more disservice to nations than the bad laws of the nations which touch their borders, the contagion of which, as a general thing, spreads widely?

And why do foreigners attack us only, when each of the nations about them has its own laws and institutions; and there is almost no agreement among them? And why precisely, are they troubled, for we have enacted no new laws, but continue steadfast in our ancient right? Why do they complain, for we are not the only people who enjoy these institutions, nor are we the first to have them nor do we now enjoy them for the first time?

So, our laws do not please certain persons! Perhaps their own laws do not please them either. We do not officiously meddle with the institutions of other nations. Let them leave ours, which have been tested by trial through so many years, to us. Do we disturb their assemblies? In what respect do we cause them trouble?

They say, "You are divided."

I can readily answer, "What is that to you? We are divided at our own risk and at our own loss."

I can name not a few civil insurrections which were not at all harmful to commonwealths or kingdoms; but I shall not employ that defense. I deny that any people has less internal dissension than we. I deny that any nation has managed its internal disputes with more moderation than we. There have been many contests over questions of the laws, over the powers of government, and over the administration of the kingdom, but the sovereignty has been ever preserved. Nor [in Scotland]